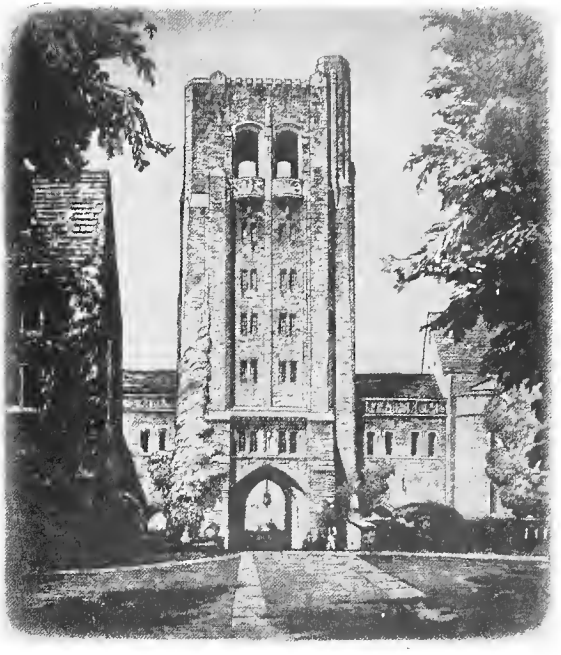

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THE

VALIDITY OF STATUTES

IN

PENNSYLVANIA

I. TITLES OF ACTS OF ASSEMBLY

II. ENACTMENTS BY REFERENCE TO FORMER LEGISLATION

III. LOCAL AND SPECIAL LEGISLATION

BY

JOHN F. SANDERSON

Of the Allegheny County Bar

PHILADELPHIA

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PREFATORY NOTE.

The purpose of this work is not to expound the several constitutional provisions treated, but to show how our courts have expounded them. As a rule, the decisions of authority are the basis of the text, those of the lower courts of the notes. The decisions of the courts of other States upon similar provisions have been deemed irrelevant. So far as they agree with ours they are useless, and so far as they relate to unsettled questions they exceed the purpose, are not themselves in harmony and their use would tend only to confuse. Where our own cases "do square and vary" there is no discussion nor attempt to reconcile them. They are usually grouped in such manner as to enable the learned reader to judge of their consistency, and thus the work is made suggestive, rather than critical or argumentative. It is recognized that the law upon the subjects treated is yet in a formative condition, and the effort has been to indicate the settled points, to exhibit the reasoning in the language of the cases, and to formulate the general principles without vainly attempting a final exposition of their scope and application—a thing forbidden alike by the present state of the authorities and the nature of the subject-matter.

PITTSBURGH, Nov. 1st, 1897.

CONTENTS.

PART I.

TITLES OF ACTS OF ASSEMBLY.

		PAGE
1.	The provision is mandatory,	1
2.	The title is part of the Act,	6
3.	The purpose of the provision,	10
4.	The construction of the provision,	12
5.	The scope of the Act is measured by the title,	14
6.	The subject must be clearly expressed,	16
7.	Fair notice of the scope of the Act must be given,	19
8.	The title must be in terms sufficiently specific,	19
9.	The title must not be inconsistent with the enactment,	21
10.	The title must indicate the effect of the Act in relation to persons or matters not necessarily affected by the general legislative purpose,	23
11.	The subject must be single,	29
12.	The Act may properly include matters germane to the subject expressed in the title,	34
13.	Two subjects,	40
14.	Original Acts and general supplements and amendments,	42
15.	Original Acts and specific supplements and amendments,	47
16.	Repeal and re-enactment,	48
17.	Provisos, exceptions, and exemptions,	52
18.	Appropriation bills,	53

PART II.

ENACTMENTS BY REFERENCE TO FORMER LEGISLATION.

PAGE

1. The object of the provision, ... 61
2. The provision is mandatory, ... 62
3. It is not necessary to recite at length the pre-existing statute, or portions thereof, the provisions of which are revived, amended, extended, or conferred, . 62
4. Express amendments by way of addition must recite, in full, the provision to which the addition is made, 64
5. The provision does not apply to independent enactments, ... 64
6. The provision does not apply to supplements, 65
7. The provision does not apply to repeals, . 67
8. The provision does not apply in case of revival of a pre-existing statute by reason of the repeal of a repealing Act, ... 67
9. Independent enactments referring to pre-existing law, ... 68
10. The provision cannot be evaded by an expository statute, ... 83
11. Re-enactment of former statute by way of amendment, without regarding intervening repeal or amendment, ... 84
12. Making a local statute general where the local statute, enacted prior to 1874, extended the provisions of a pre-existing statute, . . 89

PART III.

LOCAL AND SPECIAL LEGISLATION.

CHAPTER I.

General Principles.

PAGE

1. The constitutional provisions generally, . 95
2. What is meant by a special or local law, . . . 98
3. The constitutional provisions are to be so construed as to prevent the mischief designed to be remedied by their adoption, ... 101
4. The provisions as to local and special legislation apply only to the General Assembly, . . . 107
5. A law is general which contains an exception rendering it apparently special, if the exception be made pursuant to a special constitutional provision, . 109
6. A law is general though its operation may be impeded by pre-existing special laws, and hence such laws may be saved by exception, . . . 111
7. A law may be general as to a class of persons, and therefore valid, although special and local as to its subject-matter, ... 116
8. A general law may contain special provisions necessary to render it effective, ... 117

CHAPTER II.

Classification and Minor Topics.

		PAGE
1.	Classification generally,	121
2.	The principle of classification is not as a rule affected by the Constitution,	129
3.	What is a proper classification is generally a judicial question,	135
4.	There can be no classification of cities or counties save by population,	139
5.	Classification of cities, counties, or other subdivisions, must be complete in order to justify legislation for a given class of either,	140
6.	Classification must not be pretended, false, evasive, nor excessive,	141
7.	Classification by population must not work exclusion, but must be operative from time to time, so as by change of population the subject may pass from class to class,	147
8.	Transition from class to class,	148
9.	Option under classification Acts,	156
10.	Option as related to local and special legislation,	165
11.	Legislation for cities by classes must be confined to municipal matters proper,	172
12.	What are municipal matters proper and what are not,	203
13.	Acts of Assembly void in part,	214
14.	Validity of things executed under invalid Acts of Assembly,	216
15.	Curative statutes,	223
16.	Questions of repeal,	230

CHAPTER III.

SUMMARY OF APPLICATIONS OF THE FOREGOING PRINCIPLES.

PAGE

1. Local affairs of political subdivisions of the State, 238
   Preliminary, ... 238
   1. Counties, ... 241
   2. Cities, ... 249
   3. Boroughs, ... 256
   4. Townships, ... 257
   5. School Districts, ... 257
2. Highways, ... 261
3. Judicial matters, . . . 262
4. Liens, ... 267
5. Taxation, . . . 269
6. Elections, ... 275
7. Private corporations, ... 276
8. Cemeteries, etc., ... 279
9. Labor, trade, mining, or manufacturing, . . . 279
10. Special privileges and immunities, . . 281
11. Partial repeal of a general law, ... 283
12. Cases within general law or judicial jurisdiction, 283
13. Notice, ... 284

A TABLE OF ACTS WITH CITATIONS.

This table cites the Acts of Assembly directly involved in the cases referred to in the text and notes following. It is made up principally of those objected to upon constitutional grounds, and either sustained or held invalid in whole or in part. Many other Acts have been supplied by legislation or silently disregarded by the courts and the profession because plainly invalid within the principles declared by the decided cases.

1865, Feb. 4, P. L. 97 Streets
Church Street, 54 Pa. St. 353
1865, Mar. 16, P. L. 394 Railways
Philadelphia v. Spring Garden Co., 161 Pa. St. 522
1866, Oct. 31, P. L. 1867, p. 1527 Forest Co.
Blood v. Mercelliott, 53 Pa. St. 391
1867, Apr. 12, P. L. 1178 Liquors
Hatfield v. Commonwealth, 120 Pa. St. 395
1867, Apr. 18, P. L. 91 Courts
Commonwealth v. Green, 58 Pa. St. 226
1868, Mar. 3, P. L. 263 Oxford
Oxford Borough Street, 2 P. D. R. 327
1868, Mar. 16, P L. 352 Boroughs in Chester Co.
Nutt's Avenue, 2 Chester, 49
Phœnixville Road, 109 Pa. St. 44
1868, Mar. 23, P. L. 424 Fences
Penna. R. R. v. Riblet, 66 Pa. St. 164
1868, Apr. 1, P. L. 583 Norristown
Schall v. Norristown, 3 Luz. Leg. R. 77
Schall v. Norristown, 6 Leg. Gaz. 167
1868, Apr. 8, P. L. 752 Liens
Dorsey's Appeal, 72 Pa. St. 192
1868, Apr. 23, P. L. 1022 Fences
Penna. R. R. v. Riblet, 66 Pa. St. 164
1869, Mar. 18, P. L. 393 Streets
Hancock Street, 1 W. N. C. 112

1869, Mar. 24, P. L. 513 Liens
Mauch Chunk v. McGee, 81 Pa. St. 433
1869, Apr. 9, P. L. 759 Liquors
Commonwealth v. Franz, 135 Pa. St. 389
1869, Apr. 10, P. L. 828 Streets
Hancock Street, 1 W. N. C. 112
1869, Apr. 15, P. L. 30 Evidence
Yeager v. Weaver, 64 Pa. St. 425
1869, Apr. 15, P. L. 965 Streets
McGee's Appeal, 114 Pa. St. 470
1869, May 3, P. L. 1870, p. 1441 Sewage Company
City Sewage Company v. Davis, 8 Phila. 625
1870, Feb. 25, P. L. 241 Taxation
Lehigh Iron Co. v. Lower Macungie Township 81 Pa. St. 482
1870, Apr. 5, P. L. 1871, p. 1484 Railroads
State Line & Juniata R. R. Co.'s Appeal, 77 Pa. St. 429
1870, Apr. 9, P. L. 1056 Sewage Company
City Sewage Company v. Davis, 8 Phila. 625
1870, Apr. 9, P. L. 1068 Bottles
Commonwealth v. Farley, 6 C. C. R. 433
1870, June 2, P. L. 1318 Turnpikes, etc.
Frederick v. Penna. Canal Co., 109 Pa. St. 50
1870, Aug. 5, P. L. 1871, p. 1548, Appx. Public Buildings
Wheeler v. Rice, 83 Pa. St. 232
Lea v. Bumm, 3 W. N. C. 335
1871, Jan. 2, P. L. 1556 Harrisburg
State Street, 2 Leg. Chron. 1
1871, Feb. 8, P. L. 31 Coudersport
Payne v. School District, 168 Pa. St. 386
1871, Mar. 22, P. L. 1873, p. 1955, Appx. Philadelphia Co.
Carother's Appeal, 118 Pa. St. 468
1871, Apr. 25, P. L. 1138 Allegheny County
Allegheny Co. Home's Case, 77 Pa. St. 77
1871, May 9, P. L. 639 Boroughs
Street in Royersford, 2 Montg. Co. 153

1871, May 10, P. L. 655 Troy Hill Road
Beckert v. Allegheny, 85 Pa. St. 191
Dewhurst v. Allegheny, 95 Pa. St. 437
1871, May 24, P. L. 1096 Mount Joy, etc.
Mt. Joy v. Lancaster Tpk., 13 Lanc. Law Rev. 180
Mt. Joy v. Lancaster Tpk., 182 Pa. St. 581
1872, Mar. 8, P. L. 264 Railways
Phila. v. Ridge Ave. Pass. Ry. Co., 142 Pa. St. 484
Phila. v. Ridge Ave. Pass. Ry. Co., 6 C. C. R. 283
Ridge Ave. Pass. Ry. Co. v. Phila., 124 Pa. St. 219
Ridge Ave. Pass. Ry. Co. v. Phila., 142 Pa. St. 484
Ridge Ave. Pass. Ry. Co. v. Phila., 23 W. N. C. 324
1872, Mar. 9, P. L. 290 Railways
Millvale v. Evergreen Ry. Co., 31 Pa. St. 1
1872, Mar. 13, P. L. 339 Railroads
Union Pass. Ry. Co.'s Appeal, 81* Pa. St. 91
1872, Mar. 16, P. L. 405 Cambria County
Commonwealth v. Dillon, 17 C. C. R. 227
Commonwealth v. Lloyd, 2 Super. Ct. 6
1872, Mar. 29, P. L. 651 Roads
Philadelphia v. Donahew, 5 Leg. Gaz. 22
Philadelphia v. Donahew, 1 Leg. Chron. 45
1872, Mar. 30, P. L. 679 Loyalsock Creek
Rogers v. Mfrs. Improvement Co. 109 Pa. St. 109
1872, Apr. 1, P. L. 707 Roads
Beckert v. Allegheny, 85 Pa. St. 191
Dewhurst v. Allegheny, 95 Pa. St. 437
1872, May 6, P. L. 1163 Streets
Commonwealth v. Clovis, 33 Leg. Gaz. 53
Commonwealth v. Dickinson, 9 Phila. 561
1873, Jan. 28, P. L. 100 Carlisle
Quinn v. Cumberland Co. 162 Pa. St. 55
1873, Mar. 14, P. L. 290 Private Act
Commonwealth v. Henderson, 172 Pa. St. 135
Commonwealth v. Henderson, 37 W. N. C. 344
Commonwealth v. Henderson, 43 P. L. J. 207

1873, Mar. 25, P. L. 330 Streets
Commonwealth v. Dickinson, 1 W. N. C. 185
Commonwealth v. Clovis, 1 W. N. C. 185
1873, Mar. 25, P. L. 396 Arbitration
Cutler v. Richley, 151 Pa. St. 195
1873, Mar. 27, P. L. 54 Danville Hospital
Clearfield Co. v. Cameron Poor District, 135 Pa. St. 86
1873, Apr. 28, P. L. 860 Kilbuck Island
Allegheny v. Moorhead, 80 Pa. St. 118
1873, May 24, P. L. 1874, p. 379, McKeesport
McKeesport v. Owens 6 W. N. C. 492
1873, June 6, P. L. 1874, p. 407, Streets
In re Arrott Street, 18 W. N. C. 121
1874, Apr. 20, P. L. 65 Municipal Debt
Bruce v. Pittsburg, 166 Pa. St. 152
1874, May 6, P. L. 125 Fees
Commonwealth v. Anderson, 178 Pa. St. 171
1874, May 14, P. L. 158 Taxation
Sewickley Borough v. Sholes, 118 Pa. St. 165
1874, May 14, P. L. 159 Boroughs
Commonwealth v. Dolphin, 2 C. P. Rep. 85
Commonwealth v. Morgan, 178 Pa. St. 198
Commonwealth v. Rynkiewicz, 178 Pa. St. 213
Commonwealth v. Shoemaker, 178 Pa. St. 214
Commonwealth v. Taylor, 159 Pa. St. 451
Commonwealth v. Toomey, 178 Pa. St. 215
Commonwealth v. Van Loon, 4 Kulp, 338
Commonwealth v. Williams, 178 Pa. St. 211
1874, May 23, P. L. 230 Cities, Schools
Wheeler v. Philadelphia, 77 Pa. St. 338
Reading v. Savage, 120 Pa. St. 198
Ayars' Appeal, 122 Pa. St. 266
Shoemaker v. Harrisburg, 122 Pa. St. 285
Berghaus v. Harrisburg, 122 Pa. St. 289
Klugh v. Harrisburg, 122 Pa. St. 289
Meadville v. Dickson, 129 Pa. St. 1

1874, May 23, P. L. 230—Continued
Reading v. Savage, 124 Pa. St. 328
Philadelphia v. Pepper, 181 Pa. St. 566
Philadelphia v. Pepper, 6 P. D. R. 617
Gaston v. Graham, 18 C. C. R. 265
Gaston v. Meadville, 5 P. D. R. 549
Baker v. McKee, 6 P. D. R. 599
Sixteenth Street, 4 C. C. R. 124
Van Storch v. Scranton, 3 C. C. R. 567
Van Storch v. Scranton, 3 C. C. R. 571
Hoopes v. Scranton, 1 Wilcox, 189
1875, Mar. 18, P. L. 15 Cities
Scranton School District's Appeal, 113 Pa. St. 176
Commonwealth v. Halstead, 1 C. C. R. 335
Commonwealth v. Halstead, 2 C. P. Rep. 247
Commonwealth v. Halstead, 18 W. N. C. 385
1875, Mar. 18, P. L. 24 Married Women
Loftus v. Bank, 133 Pa. St. 97
1875, Mar. 18, P. L. 62 Assessors
Pittsburg's Assessors, 7 Leg. Gaz. 117
1875, Apr. 12, P. L. 40 Liquors
Commonwealth v. Deibert, 12 C. C. R. 504
Commonwealth v. Deibert, 2 P. D. R. 446
1876, Mar. 31, P. L. 13 Salaries
Taggart v. Commonwealth, 102 Pa. St. 354
Rymer v. Luzerne Co., 142 Pa. St. 108
Guldin v. Schuylkill Co., 149 Pa. St. 210
Commonwealth v. Comrey, 149 Pa. St. 216
1876, Apr. 11, P. L. 20 Cities
Ayars' Appeal, 122 Pa. St. 266
Shoemaker v. Harrisburg, 122 Pa. St. 285
Berghaus v. Harrisburg, 122 Pa. St. 289
Klugh v. Harrisburg, 122 Pa. St. 289
Meadville v. Dickson, 129 Pa. St. 1
1876, Apr. 17, P. L. 29 Summary Convictions
Commonwealth v. Swift, 17 C. C. R. 95
Mauch Chunk v. Betzler, 19 C. C. R. 27

1876, Apr. 17, P. L. 29—Continued
Mauch Chunk v. Betzler, 10 York, 151
Mauch Chunk v. Betzler, 6 P. D. R. 330
1876, Apr. 20, P. L. 43 Appeals from Justices of Peace
Foster v. Strayer, 19 C. C. R. 417
Foster v. Strayer, 13 Lanc. L. R. 285
Foster v. Strayer, 6 P. D. R. 333
Cochran v. McKelvy, 25 P. L. J. 120
1876, Apr. 20, P. L. 44 Taxation
Scranton v. Silkman, 113 Pa. St. 191
Lake Shore & M. S. Ry. Co.'s Appeal, 1 C. C. R. 327
1876, May 1, P. L. 90 Corporations
York Telephone Co. v. Keesey, 9 York, 153
Telephone Co. v. Keesey, 5 P. D. R. 366
1876, May 1, P. L. 93
Barrett's Appeal, 116 Pa. St. 486
1876, May 4, P. L. 201 John Robinson
School District v. Robinson, 37 Leg. Int. 94
Montgomery v. Commonwealth, 91 Pa. St. 125
1876, May 5, P. L. 124 Cities
Bruce v. Pittsburg, 166 Pa. St. 152
Safe Deposit & Trust Co. v. Fricke, 152 Pa. St. 231
1876, May 5, P. L. 112 Bridges
Myers v. Commonwealth, 110 Pa. St. 217
1876, May 8, P. L. 147 Street Railways
Reeves v. Phila. Traction Co., 152 Pa. St. 153
Watkins v. Phila. Pass. Ry., 152 Pa. St. 153
Haines v. Twenty-second St. Pass. Railway, 152 Pa. St. 153
Watkins v. West Phila. Pass. Ry. Co., 11 C. C. R. 648
Watkins v. West Phila. Pass. Ry. Co., 1 P. D. R. 463
1876, May 8, P. L. 149 Poor
Taxpayer's Petition, 26 P. L. J. 146

1876, May 15, P. L. 109 Bottles
Commonwealth v. Farley, 6 C. C. R. 433
1877, Mar. 22, P. L. 16 Taxes
Safe Deposit Co. v. Fricke, 152 Pa. St. 231
Kilgore v. Magee, 85 Pa. St. 401
Commonwealth v. Macferron, 152 Pa. St. 244
McKay v. Trainor, 152 Pa. St. 242
Pittsburg v. Hughes, 13 C. C. R. 535
Bradley v. Pittsburg, 130 Pa. St. 475
1877, Mar. 24, P. L. 40 Poor
Taxpayer's Petition, 26 P. L. J. 146
1877, Mar. 24, P. L. 47 Cities
Commonwealth v. Denworth, 145 Pa. St. 172
1877, Apr. 7, P. L. 83 Scranton
Ruth's Appeal, 10 W. N. C. 498
1877, Apr. 18, P. L. 54 Cemeteries
Craig v. Presbyterian Church, 88 Pa. St. 42
1877, May 23, P. L. 25 Fees
Strine v. Foltz, 1 C. C. R. 490
Strine v. Foltz, 113 Pa. St. 349
1878, Apr. 18, P. L. 29 Courts
Commonwealth v. Patton, 88 Pa. St. 258
1878, May 3, P. L. 43 Records
Beaver Co. Indexes, 6 C. C. R. 525
Lanius' Petition, 1 York, 221
1878, May 10, P. L. 51 Boroughs
Commonwealth v. Morgan, 178 Pa. St. 198
Commonwealth v. Williams, 178 Pa. St. 211
Commonwealth v. Rynkiewicz, 178 Pa. St. 213
Commonwealth v. Shoemaker, 178 Pa. St. 214
Commonwealth v. Toomey, 178 Pa. St. 215
Commonwealth v. Taylor, 159 Pa. St. 451
1878, May 23, P. L. 111 Street Railways
Berks v. Lebanon Electric Ry., 5 C. C. R. 467
Seitz v. Lafayette Traction Co., 5 C. C. R. 469
1878, May 24, P. L. 133 Taxation
Lake Shore & Mich. So. Ry., 1 C. C. R. 327

1878, May 24, P. L. 133—Continued
Scranton v. Silkman, 113 Pa. St. 191
Penna. R. R. Co.'s Appeal, 3 C. C. R. 162
1878, May 24, P. L. 134 Executions
Wilson v. Downing, 4 Super. Ct. 487
1878, May 25, P. L. 144 Milk
Commonwealth v. Hough, 1 D. R. 51
1878, June 3, P. L. 160 Fish
Commonwealth v. Nihil, 4 P. D. R. 582
1878, June 12, P. L. 187 Fees
Morrison v. Bachert, 122 Pa. St. 322
1878, June 12, P. L. 196 Crime
Commonwealth v. Fleckner, 17 C. C. R. 671
1878, June 12, P. L. 198 Dogs
Bowen v. Tioga Co., 6 C. C. R. 613
1879, Mar. 19, P. L. 9 Street Railways
Weinman v. Passenger Ry. Co., 118 Pa. St. 192
1879, Apr. 16, P. L. 24 Taxes
Philadelphia v. Kates, 150 Pa. St. 30
1879, Apr. 22, P. L. 30 County Auditors
Nason v. Poor Directors, 126 Pa. St. 445
Nason v. Poor Directors, 22 W. N. C. 60
1879, May 1, P. L. 44 Cities
Commonwealth v. Denworth, 145 Pa. St. 172
1879, May 21, P. L. 72 Salaries
Commonwealth v. Mercer, 9 C. C. R. 461
1879, June 4, P. L. 78 Poor
Jenks v. Sheffield, 135 Pa. St. 400
1879, June 7, P. L. 112 Taxation
Commonwealth v. Martin, 107 Pa. St. 185
1879, June 11, P. L. 126 Husband and Wife
Kelly v. Mayberry, 154 Pa. St. 440
1879, June 11, P. L. 129 Fraudulent Debtors
Hortsman v. Kaufman, 97 Pa. St. 147
1879, June 11, P. L. 150 Boroughs
Pottstown Borough, 1 Montg. Co. 161
Pottstown Borough, 1 Montg. Co. 189

1879, June 11, P. L. 150—Continued
Pottstown Borough, 4 Montg. Co. 29
Lansdale Borough, 1 Montg. Co. 192
1879, June 12, P. L. 174 Courts
Scowden's Appeal 96 Pa. St. 422
1879, June 28, P. L. 182 Mechanics' Liens
Davis v. Clark, 106 Pa. St. 377
1879, July 7, P. L. 194 Justices' Jurisdiction
Johnson v. Beacham, 2 C. C. R. 108
Wissler v. Becker, 2 C. C. R. 103
Wilkes-Barre v. Myers, 113 Pa. St. 395
1881, Feb. 14, P. L. 3 County Officers
Donohugh v. Roberts, 11 W. N. C. 186
1881, Feb. 14, P. L. 6 Cities
Commonwealth v. Denworth, 145 Pa. St. 172
1881, June 2, P. L. 41 Taxes
Van Loon v. Engle, 171 Pa. St. 157
Townsend v. Wilson, 7 C. C. R. 101
Bryn Mawr v. Anderson, 10 C. C. R. 442
Miller v. Cunningham, 7 C. C. R. 500
Ancona v. Becker, 3 P. D. R. 86
1881, June 2, P. L. 41 County Auditors
Nason v. Poor Directors, 126 Pa. St. 445
1881, June 8, P. L. 60 Cities
East Grant Street, 121 Pa. St. 596
1881, June 8, P. L. 70 Trespass
Commonwealth v. Clark, 3 Super. Ct. 141
1881, June 10, P. L. 79 Fish
Commonwealth v. Bender, 7 C. C. R. 620
Commonwealth v. Bender, 8 W. N. C. 73
1881, June 10, P. L. 86 Taxation
Second National Bank v. Caldwell, 39 Leg. Int. 414
Second National Bank v. Caldwell, 13 Fed. Rep. 429
1881, June 10, P. L. 93 Interpleader
Reynolds Lumber Co. v. Reynolds, 4 P. D. R. 573
1883, Feb. 16, P. L. 5 Boroughs
Commonwealth v. Taylor, 159 Pa. St. 451

1883, Apr. 19, P. L. 9 Taxes
Philadelphia v. Kates, 150 Pa. St. 30
1883, May 17, P. L. 36 Boroughs
Pottstown Borough, 117 Pa. St. 538
Pottstown Borough, 1 Montg. Co. 189
1883, May 22, P. L. 39 Streets
Strohl v. Ephrata, 13 Lanc. L. R. 1
1883, June 1, P. L. 51 Taxation
Ruth's Appeal, 8 Lanc. L. R. 264
Cassel's Appeal, 8 Lanc. L. R. 260
La Plume Borough v. Gardner, 148 Pa. St. 192
1883, June 1, P. L. 52 Miners
Commonwealth v. Hartzell, 17 C. C. R. 91
1883, June 1, P. L. 58 County Buildings
Chester County Court-house, 7 C. C. R. 212
1883, June 4, P. L. 72 Railroads
Hoover v. Penna. R. R., 156 Pa. St. 220
1883, June 13, P. L. 99 Prisoners
Commonwealth v. Carey, 2 C. C. R. 293
Carey's Petition, 43 Leg. Gaz. 384
1883, June 13, P. L. 116 Wages
Evans' Appeal, 152 Pa. St. 401
Rogers v. Glendower Iron Works, 17 W. N. C. 444
1883, June 20, P. L. 134 Foreign Insurance Cos.
Kennedy v. Agricultural Ins. Co., 165 Pa. St. 179
1883, June 22, P. L. 139 Salaries
McCarty v. Commonwealth, 110 Pa. St. 243
1883, June 22, P. L. 161 Municipal Claims
Philadelphia v. Pepper, 2 C. C. R. 287
Philadelphia v. Pepper, 16 W. N. C. 331
Phila. v. Haddington Church, 115 Pa. St. 291
1883, July 5, P. L. 182 Salaries
Commonwealth v. Mercer, 9 C. C. R. 461
Commonwealth v. Evans, 6 Kulp, 145
1885, June 1, P. L. 37 Cities
Simon's Case, 4 P. D. R. 189
Betz v. Philadelphia, 18 W. N. C. 121

1885, June 1, P. L. 37—Continued
Betz v. Philadelphia, 21 W. N. C. 155
Betz v. Philadelphia, 4 C. C. R. 481
1885, June 3, P. L. 55 Lottery Gifts
Commonwealth v. Moorhead, 7 C. C. R. 513
1885, June 11, P. L. 108 Schools
Baker v. McKee, 6 P. D. R. 599
Gaston v. Graham, 18 C. C. R. 265
1885, June 23, P. L. 141 Wolves, etc.
Sanders v. Cambria Co., 16 C. C. R. 94
Sanders v. Cambria Co., 4 P. D. R. 24
1885, June 23, P. L. 142 Fences
Frost v. Cherry, 122 Pa. St. 417
1885, June 24, P. L. 160 Records
Gackenbach v. Lehigh Co., 166 Pa. St. 448
Pierie v. Philadelphia, 139 Pa. St. 573
1885, June 25, P. L. 187 Taxes
Evans v. Phillipi, 117 Pa. St. 226
Bennett v. Hunt, 148 Pa. St. 257
Bitting v. Commonwealth, 20 W. N. C. 178
Bitting v. Commonwealth, 2 C. C. R. 298
Commonwealth v. Swab, 8 C. C. R. 111
Evans v. Witmer, 4 Lanc. L. R. 105
Commonwealth v. Frutchey, 1 P. D. R. 153
Commonwealth v. Frutchey, 11 C. C. R. 112
Keim v. Devitt, 3 C. C. R. 250
Hannick's Bond, 3 C. C. R. 254
Collector's Bond, 4 Lanc. L. R. 166
Commonwealth v. Lackawanna County Commissioners, 7 C. C. R. 173
Evans v. Witmer, 2 C. C. R. 612
Commonwealth v. Lyter, 162 Pa. St. 50
Commonwealth v. Klugh, 162 Pa. St. 50
Commonwealth v. Swatara Township, 1 Super. Ct. 502
1885, June 25, P. L. 170 Turnpikes
Carbondale, etc., Turnpike, 17 W. N. C. 310

1885, June 25, P. L. 170—Continued
Carbondale, etc., Turnpike, 22 W. N. C. 105
Carbondale, etc., Turnpike, 4 Lanc. L. R. 361
Little Equinunk, etc., Turnpike Company, 2 C. C. R. 632
1885, June 30, P. L. 193 Taxation
Sanderson v. Commissioners, 1 C. C. R. 342
Hawes Mfg. Co.'s Appeal, 1 Monaghan, 353
1885, June 30, P. L. 250 Plumbers; Boards of Health
Commonwealth v. Lambrecht, 3 C. C. R. 323
Commonwealth v. Lambrecht, 44 Leg. Int. 196
1885, July 7, P. L. 260 Milk
Commonwealth v. Hough, 1 D. R. 51
1887, Mar. 22, P. L. 8 Livery-stable Keepers
Commonwealth v. Moore, 2 Super. Ct. 162
Commonwealth v. Moore, 4 P. D. R. 649
Commonwealth v. Moore, 16 C. C. R. 481
Commonwealth v. Lehr, 16 C. C. R. 532
1887, Mar. 22, P. L. 8 Motor Companies
Smith v. Reading City Pass. Ry. Co., 13 C. C. R. 49
Smith v. Reading City Pass. Ry. Co., 2 D. R. 490
Smith v. Reading City Pass. Ry. Co., 156 Pa. St. 5
1887, Apr. 13, P. L. 22 Salaries
Reid v. Smoulter, 128 Pa. St. 324
1887, Apr. 28, P. L. 263 Poor
Straub v. Pittsburg, 38 P. L. J. 89
1887, May 6, P. L. 79 Col. Inh. Tax
Bittinger's Appeal, 129 Pa. St. 338
Del Busto's Estate, 23 W. N. C. 111
1887, May 6, P. L. 84 Obscene Literature
Commonwealth v. Havens, 6 C. C. R. 545
1887, May 6, P. L. 87 Streets
Ruan Street, 1st, 24 W. N. C. 460
Ruan Street, 2d, 25 W. N. C. 349

1887, May 6, P. L. 87—Continued
Ruan Street, 132 Pa. St. 257
1887, May 6, P. L. 92 Bridges
Boston Bridge Co.'s Case, 13 C. C. R. 190
1887, May 13, P. L. 108 Liquors
Commonwealth v. Silverman, 138 Pa. St. 642
Commonwealth v. Sellers, 130 Pa. St. 32
Durr v. Commonwealth, 3 C. C. R. 525
Commonwealth v. McCandless, 21 W. N. C. 162
Commonwealth v. Fowler, 18 Phila. 513
Commonwealth v. Haag, 6 C. C. R. 118
Commonwealth v. Doll, 6 C. C. R. 49
1887, May 13, P. L. 116 Wolves, etc.
Sanders v. Cambria Co., 16 C. C. R. 94
Sanders v. Cambria Co., 4 P. D. R. 91
1887, May 18, P. L. 118 Mechanics' Lien
Smyers v. Beam, 158 Pa. St. 57
Purvis v. Ross, 158 Pa. St. 20
1887, May 24, P. L. 189 Druggists
Commonwealth v. Zacharias, 181 Pa. St. 126
Commonwealth v. Zacharias, 3 Super. Ct. 364
1887, May 24, P. L. 194 Liquors
Doberneck's License, 5 C. C. R. 454
Doberneck's License, 45 Leg. Int. 256
Doberneck's License, 35 P. L. J. 476
Commonwealth v. Deibert, 2 P. D. R. 53
1887, May 24, P. L. 204 Cities
Meadville v. Dickson, 129 Pa. St. 1
Ayars' Appeal, 122 Pa. St. 266
Shoemaker v. Harrisburg, 122 Pa. St. 285
Shoemaker v. Harrisburg, 4 C. C. R. 86
Berghaus v. Harrisburg, 122 Pa. St. 289
Klugh v. Harrisburg, 122 Pa. St. 289
Grant Street, 121 Pa. St. 596
Reading v. Savage, 120 Pa. St. 198
Carbondale Township's Appeal, 5 C. C. R. 339

1887, May 25, P. L. 271 Procedure
Krause v. Penna. R. R. Co., 4 C. C. R. 60
Kaufman v. Jacobs, 4 C. C. R. 462
Doud v. Insurance Co., 6 C. C. R. 329
Reeves v. Edsall, 1 Lack. Jur. 96
1887, May 28, P. L. 274 Schools
Engle v. Reichard, 4 Kulp, 361
Engle v. Reichard, 4 C. C. R. 48
1887, June 1, P. L. 285 Boroughs
Darby & Collingdale, 19 C. C. R. 315
Sharon Hill Borough, 140 Pa. St. 250
Sharon Hill Borough, 4 Del. 252
1887, June 1, P. L. 289 Judgments
Stuart's Appeal, 163 Pa. St. 210
1887, June 2, P. L. 310 Corporations
Luzerne Water Co. v. Toby Creek Water Co., 148 Pa. St. 568
1887, June 3, P. L. 332 Married Women
Grubb's Appeal, 174 Pa. St. 187
1887, June 3, P. L. 337 Wages
Evans' Appeal, 152 Pa. St. 401
1887, June 14, P. L. 386 Streets
Pittsburg's Petition, 138 Pa. St. 401
Wyoming Street, 137 Pa. St. 494
King v. Philadelphia Co., 154 Pa. St. 160
Dunn v. Mellon, 147 Pa. St. 11
Donley v. Pittsburg, 147 Pa. St. 348
1887, June 14, P. L. 395 Cities
Pittsburg's Petition, 138 Pa. St. 401
Straub v. Pittsburg, 138 Pa. St. 356
Commonwealth v. Morrow, 40 P. L. J. 327
1887, June 17, P. L. 409 Liens
McKeever v. Victor Oil Co., 9 C. C. R. 284
Swaney v. Washington Oil Co., 7 C. C. R. 351
Titus v. Elyria Oil Co., 1 P. D. R. 204

1887, June 17, P. L. 413 Liens
Titusville Iron Works v. Keystone Oil Company, 122 Pa. St. 627
Lucas v. Ruff, 45 L. I. 454
Bennett v. Maloney, 4 Kulp, 537
Gardner v. Gibson, 21 W. N. C. 12
Roth v. Hobson, 5 C. C. R. 17
Roth v. Hobson, 21 W. N. C. 64
1889, Feb. 14, P. L. 4 Constables
Allegheny Co. v. Constables, 17 C. C. R. 622
1889, Feb. 14, P. L. 7 Assessors
Commonwealth v. Green, 7 Kulp, 151
Commonwealth v. Coleman, 9 C. C. R. 90
1889, Apr. 22, P. L. 39 Boroughs
Washington v. McGeorge, 146 Pa. St. 248
1889, Apr. 25, P. L. 54 Foxes and Minks
Sanders v. Cambria Co., 4 P. D. R. 241
Sanders v. Cambria Co., 16 C. C. R. 94
1889, Apr. 25, P. L. 52 County Commissioners
Young v. Bradford Co., 7 C. C. R. 428
Wren v. Luzerne Co., 6 Kulp, 37
1889, Apr. 28, P. L. 44 Boroughs
Greensburg v. Laird, 8 C. C. R. 608
1889, May 4, P. L. 83 Constables
Reading's Constables, 8 C. C. R. 101
1889, May 7, P. L. 116 Insurance Agents
Commonwealth v. Morningstar, 144 Pa. St. 103
1889, May 8, P. L. 123 Veterans
Bearce v. Fairview Township, 9 C. C. R. 342
Bearce v. Fairview Township, 27 W. N. C. 211
1889, May 8, P. L. 129 Roads
Cheltenham Road, 140 Pa. St. 136
Cheltenham Road, 7 Montg. 42
Sewer Street, 8 C. C. R. 226
East Avenue, 7 Lanc. L. R. 154
1889, May 8, P. L. 133 Cities
Commonwealth v. Wyman, 137 Pa. St. 508

1889, May 8, P. L. 133—Continued
Commonwealth v. Green, 7 Kulp, 151
1889, May 9, P. L. 162, Deputy Coroners
Commonwealth v. Grier, 9 C. C. R. 444
1889, May 13, P. L. 196
Devers v. York, 150 Pa. St. 208
Devers v. York, 156 Pa. St. 359
Melick v. Williamsport, 162 Pa. St. 408
1889, May 14, P. L. 211 Street Railways
Penna. R. R. v. Montgomery Co. Pass. R. R., 3 P. D. R. 58
Gettysburg Battlefield Association, 2 P. D. R. 649
1889, May 15, P. L. 222 Dogs
Commonwealth v. Depuy, 148 Pa. St. 201
1889, May 16, P. L. 228 Streets
Pittsburg's Petition, 138 Pa. St. 401
Donley v. Pittsburg, 147 Pa. St. 348
Dunn v. Mellon, 147 Pa. St. 11
1889, May 23, P. L. 272 Assessments
Chester City v. Black, 132 Pa. St. 568
1889, May 23, P. L. 274 Schools
Commonwealth v. Reynolds, 137 Pa. St. 389
Commonwealth v. Reynolds, 8 C. C. R. 568
Commonwealth v. Reichard, 5 Kulp, 540
Commonwealth v. Reichard, 8 C. C. R. 563
1889, May 23, P. L. 277 Cities
Scranton v. Whyte, 148 Pa. St. 419
Harris's Appeal, 160 Pa. St. 494
Lackawanna Township, 160 Pa. St. 494
Gardiner v. Chester, 2 P. D. R. 162
Smith v. Meadow Brook Brewing Company, 3 Lack. Jur. 154
McAskie's Appeal, 154 Pa. St. 24
Jermyn v. Scranton, 3 Lack. Leg. N. 112
Devers v. York, 150 Pa. St. 208
Devers v. York, 156 Pa. St. 359
Melick v. Williamsport, 162 Pa. St. 408

1891, Apr. 15, P. L. 17 Roads
Road in Otto Township, 2 Super. Ct. 20
Road in Otto Township, 181 Pa. St. 390
1891, May 7, P. L. 44 Wages
Hoffa's Appeal, 1 Super. Ct. 357
1891, May 12, P. L. 53 Acknowledgments
Land Co. v. Weidner, 169 Pa. St. 359
1891, May 16, P. L. 65 Sewers
Twenty-eighth Street Sewer, 158 Pa. St. 464
1891, May 16, P. L. 71 Streets
Whitney v. Pittsburg, 147 Pa. St. 351
Bingaman v. Pittsburg, 147 Pa. St. 353
Gray v. Pittsburg, 147 Pa. St. 354
Rubright v. Pittsburg, 147 Pa. St. 355
Donley v. Pittsburg, 147 Pa. St. 348
Boggs Avenue, 39 P. L. J. 308
Allen Avenue, 39 P. L. J. 309
1891, May 16, P. L. 75 Streets
Strohl v. Ephrata, 13 Lanc. L. R. 1
1891, May 20, P. L. 96 Semi-monthly Pay Roll
Commonwealth v. Isenberg, 4 P. D. R. 51
Commonwealth v. Isenberg, 4 P. D. R. 579
Bauer v. Reynolds, 14 C. C. R. 497
1891, May 23, P. L. 107 Corporations
Commonwealth v. Keystone Benefit Association, 171 Pa. St. 465
1891, June 2, P. L. 176 Mines
Durkin v. Kingston Coal Co., 171 Pa. St. 193
1891, June 8, P. L. 214 Counties
Cole v. Economy Township, 3 P. D. R. 699
1891, June 8, P. L. 216 Cemeteries
Phila. v. Westminster Cem. Co., 3 P. D. R. 151
Phila. v. Westminster Cem. Co., 162 Pa. St. 105
1891, June 8, P. L. 229 Taxation
Commonwealth v. Edgerton Coal Company, 164 Pa. St. 284

1891, June 8, P. L. 229—Continued
Commonwealth v. Wilkes-Barre & Scranton Ry., 162 Pa. St. 614
1891, June 8, P. L. 247 Divorce
Oakley v. Oakley, 1 P. D. R. 781
Oakley v. Oakley, 11 C. C. R. 572
Burdick v. Burdick, 2 P. D. R. 622
1891, June 9, P. L. 248 Liquors
South Bethlehem v. Hemingway, 16 C. C. R. 103
1891, June 16, P. L. 313 Druggists
Commonwealth v. Zacharias, 181 Pa. St. 126
Commonwealth v. Zacharias, 3 Super. Ct. 364
1891, June 19, P. L. 349 Ballot Law
Dewalt v. Bartley, 146 Pa. St. 529
Dewalt v. Commissioners, 1 P. D. R. 199
Meredith v. Lebanon Co., 1 P. D. R. 220
Ripple v. Commissioners, 1 P. D. R. 201
1893, May 11, P. L. 44 Boroughs
Smith v. Baker, 3 P. D. R. 626
1893, May 15, P. L. 52 Mines
Commonwealth v. Jones, 4 Super. Ct. 362
1893, May 19, P. L. 108 Recording Act
Davey v. Ruffell, 162 Pa. St. 443
1893, May 23, P. L. 117 Fees
Rupert v. Chester Co., 2 P. D. R. 688
1893, May 24, P. L. 124 Public Buildings
Perkins v. Philadelphia, 156 Pa. St. 554
Perkins v. Philadelphia, 156 Pa. St. 539
1893, June 6, P. L. 300 Appropriations
Commonwealth v. Gregg, 161 Pa. St. 582
1893, June 6, P. L. 328 Poor
Poor Dist. v. Clearfield Co., 16 C. C. R. 554
Poor Dist. v. Clearfield Co., 4 P. D. R. 584
Poor Dist. v. Luzerne Co., 17 C. C. R. 83
Poor Dist. v. Luzerne Co., 5 P. D. R. 183
1893, June 6, P. L. 342 Burial Grounds
Potters' Field 8 York, 145

1893, June 6, P. L. 342—Continued
York School District's Appeal, 169 Pa. St. 70
1893, June 8, P. L. 344 Husband and Wife
Mink v. Mink, 16 C. C. R. 189
1893, June 8, P. L. 393 Controllers
Commonwealth v. Severn, 164 Pa. St. 462
Commonwealth v. Samuels, 163 Pa. St. 282
Commonwealth v. Severn, 15 C. C. R. 249
Commonwealth v. Samuels, 14 C. C. R. 423
1893, June 10, P. L. 419 Elections
Evans v. Willistown Township, 168 Pa. St. 578
Commonwealth v. Weir, 18 C. C. R. 425
1893, June 12, P. L. 451 Roads
Lehigh Valley Coal Co.'s Petition, 3 P. D. R. 610
Lehigh Valley Coal Co.'s Appeal, 164 Pa. St. 44
Phila. & Reading C. & I. Co.'s Petition, 164 Pa. St. 248
1895, Apr. 18, P. L. 36 Municipal Debt
Senor v. Ephrata, 176 Pa. St. 80
1895, May 8, P. L. 56 Cities
Millvale Borough, 43 P. L. J. 411
1895, May 22, P. L. 106 Streets
Dorrance v. Dorranceton, 181 Pa. St. 164
1895, May 22, P. L. 111 Taxes
Kenner v. Kelly, 19 C. C. R. 348
Rutt v. Burkey, 14 Lanc. L. R. 11
Snyder v. Mogart, 17 C. C. R. 1
Taylor v. Bowling, 5 P. D. R. 605
Land v. Wack, 5 P. D. R. 606
Wetzell v. Goodyear, 5 P. D. R. 605
Frampton's Estate, 18 C. C. R. 462
Fryer v. Metz, 12 Montg. 108
Provident Association v. Flanagan, 19 C. C. R. 529
1895, June 18, P. L. 196 Trespass
Commonwealth v. Clark, 3 Super. Ct. 141
1895, June 24, P. L. 212 Superior Court
Commonwealth v. Reeder, 171 Pa. St. 505

1895, June 26, P. L. 317 Pure Food
Commonwealth v. Wickert, 19 C. C. R. 251
Commonwealth v. Wickert, 6 P. D. R. 136
Commonwealth v. Hufnal, 4 Super. Ct. 301
Commonwealth v. Curry, 4 Super Ct. 356
Commonwealth v. Hartman, 6 P. D. R. 136
1895, June 26, P. L. 343 Sureties
American Banking & Trust Co.'s Petition, 37 W. N. C. 297
1895, June 26, P. L. 375 Constables
Allegheny Co. Constables, 17 C. C. R. 622
1895, June 27, P. L. 403 County Controllers
Lloyd v. Smith, 176 Pa. St. 213
1895, July 2, P. L. 428 Lodgings
Commonwealth v. Muir, 1 Super. Ct. 578
Commonwealth v. Muir, 180 Pa. St. 47
1895, July 2, P. L. 434 Soldiers' Children
Sewickley v. Osborn, 19 C. C. R. 257
Sewickley v. Osborn, 6 P. D. R. 211
1895, July 3, P. L. 588 Schools
Chalfant v. Edwards, 173 Pa. St. 246
1895, July 3, P. L. 603 Schools
Chalfant v. Edwards, 173 Pa. St. 246
1897, May 12, P. L. 56 Direct Inheritance Tax
Portuondo's Estate, 19 C. C. R. 419
Portuondo's Estate, 6 P. D. R. 462
Blight's Estate, 19 C. C. R. 426
Blight's Estate, 6 P. D. R. 459
Lacey's Estate, 19 C. C. R. 431
Lacey's Estate, 6 P. D. R. 499
1897, June 15, P. L. 164 Alien Tax Law
Fraser v. McConway, 6 P. D. R. 555

I.

TITLES OF ACTS OF ASSEMBLY.

Art. XI. *Added* Sec. 8. No bill shall be passed by the Legislature containing more than one subject, which shall be expressed in the title, except appropriation bills.

Amendment, 1864.

Art. III, Sec. 3. No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title.

Constitution.

Art. III, Sec. 15. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the Executive, Legislative, and Judicial Departments of the Commonwealth, interest on the public debt and for public schools; all other appropriations shall be made by separate bills, each embracing but one subject.

Constitution.

CONTENTS.

1. The provision is mandatory.
2. The title is part of the Act.
3. The purpose of the provision.
4. The construction of the provision.
5. The scope of the Act is measured by the title.
6. The title must be clearly expressed.
7. Fair notice of the scope of the Act must be given.
8. The title must be in terms sufficiently specific.
9. The title must not be inconsistent with the enactment.
10. The title must indicate the effect of an Act in relation to persons or matters not necessarily affected by the general legislative purpose as expressed.
11. The subject must be single.
12. The Act may properly include matters germane to the subject as expressed in the title.
13. Two subjects.
14. Original Acts and general supplements and amendments.
15. Original Acts and specific supplements and amendments.
16. Repeal and re-enactment.
17. Provisos, exceptions, and exemptions.
18. Appropriation bills.

TITLES OF ACTS OF ASSEMBLY.

1. The Provision is Mandatory.

There is an intimation in the earlier cases[1] that the constitutional provision relating to the title of Acts may be directory, but the whole course of decision, beginning with Dorsey's Appeal, 72 Pa. St. 192, and including all of the cases following in which titles have been held to be insufficient, shows that the provision is mandatory, that the validity of a statute must depend upon the sufficiency of the title, and that where the latter is defective the statute will be sustained only in so far as the title indicates the subject-matter of the law. Indeed, the provision is expressly said to be mandatory in Road in Phœnixville.[2]

[1]Commonwealth v. Green, 58 Pa. St. 226; Barton v. Pittsburgh, 4 Brewst. 373.

[2]Road in Phœnixville, 109 Pa. St. 44, 48.

Argument to sustain the validity of an Act of Assembly frequently begins with such propositions as, that the presumption favors the validity of the Act; that the Judicial Department assumes, in deference to the Legislative, that no violation of the Constitution was intended by the latter; that an Act of Assembly is valid unless it is plain and clear that it infringes some specific provision of the Constitution, and that any doubt upon the subject is to be resolved in favor of the Act. It is not to be questioned that these propositions are so well settled as to have become trite and commonplace, and perhaps their application in cases arising under the several provisions herein treated ought not to be doubted. It may be well to point out, however, that these propositions were established with reference to constitutional provisions prior in time and different in character from those under con-

sideration; provisions relating to legislative power, not provisions governing merely the forms and methods of legislation where the power may be unquestioned. The provisions limiting legislative form and method were adopted for the purpose of establishing what was deemed to be a valuable legislative reform, to end certain legislative practices which had long been considered to be abuses, to prevent log-rolling, deception, and surprise in legislation, and to check what was deemed to be a growing disposition to favoritism in the enactment of special and local laws. The reform was further intended to secure uniformity of law throughout the Commonwealth upon many subjects of legislation, with reference to which a lack of uniformity tended to complicate the administration of the law or give undue local advantages. The reader of the decided cases upon the topics under consideration cannot fail to note a steady determination of the courts to carry out to the full intent the remedial provisions, nor will he fail to notice the difference in argumentative treatment which results from the character of these provisions. In form they are purely technical, and hence the argument must be so. The argument of them does not admit of such broad and practical treatment as arguments upon questions of legislative power necessarily require, and because of their purely technical nature these provisions, as a rule, are less difficult of application; there is less room for doubt. When a given statute is challenged as violative of one of these provisions the issue is upon a demurrer to the indictment. An argument founded upon a presumption of guilt or innocence is not relevant. Putting analogy aside it may be considered in truth that the issue is upon a special demurrer to the statute itself.

2. The Title is a Part of the Act.

Prior to the amendment of 1864 it was well settled that the title was not part of an Act of Assembly and could be resorted to only when there was doubt as to the meaning of the enacting words.[1] Since the amendment of 1864 the "title of an Act is a part of it. It limits its scope, and is properly used in interpreting its words."[2]

[1]Commonwealth v. Slifer, 53 Pa. St. 71.

[2]Perkins v. Philadelphia, 156 Pa. St. 554-58.

"It is objected that the title of the Act is 'An Act allowing parties in interest to be witnesses,' and that since the adoption of the Constitutional Amendment of 1864 the title must be regarded as a necessary part of a statute. We may admit this premise. In England the title is no part of a statute. Lord MANSFIELD gives as a reason for this, that 'it does not pass with the same solemnity. One reading is often sufficient:' The King v. Williams, 1 W. Bl. 93. With us, however, it is always read three times. There may be good reason for holding that the title as well as the preamble may be resorted to for the purpose of assisting the construction whenever the enacting clause is doubtful. See Cochran v. Library Company, 25 Leg. Intel. 20, but certainly not to overrule or control it."—SHARSWOOD, J.: Yeager v. Weaver, 64 Pa. St. 425-428.

The title of an Act since the first amendment of the Constitution of 1864 must now be regarded as a part of it. However it may have been before, this is important rather upon a question of construction than of power: Pennsylvania R. R. Company v. Riblet, 66 Pa. St. 164.

"However it was in England, where the title is held to be no part of a statute, indeed, was commonly framed by the clerk of Parliament after the bill had passed, without any vote being taken upon it, certainly since the first amendment of the Constitution adopted in 1864, Article XI, Section 8, it is now necessarily a part of the Act, and a very important guide to its right construction."—SHARSWOOD, J.: Eby's Appeal, 70 Pa. St. 311, 314; and see Commonwealth v. Lloyd, 2 Super. Ct. 6; Halderman's Appeal, 104 Pa. St. 251-9; Commonwealth v. Moorhead, 7 C. C. R. 513.

In the case of Commonwealth v. Martin, 107 Pa. St. 185, the Act of June 7th, 1879, P. L. 112, was in question. The title of the Act as printed in the Pamphlet Laws was, "An Act to provide revenue by taxation." By the original roll in the custody of the Secretary of the Commonwealth, the title appeared as follows:

No. 463.

An Act to provide revenue by taxation | of corporations | associations and limited partnerships

It was held in the court below that the record, *i. e.*, the

roll, was conclusive as to what the title really was, and that the record should be read without regard to the black lines enclosing the words indicated above.

His Honor, Judge SIMONTON, remarked: "We may add that we have looked into the printed journals for information, and are satisfied that even if they could be received and acted upon they would not enable us to arrive at a satisfactory conclusion. They give no intelligible account of the passage of the Act; and, indeed, we think it would be impossible to show from them that it was ever legally passed in any form.

"The thing which most clearly appears is that in all the stages of the progress of the bill in question, up to the time when it first passed both Houses and was sent to the Governor, it contained its full title; and it is manifest that if a bill can be passed with a title which does not denote its subject, and after its passage the title can be amended, so as for the first time to express its purpose, the constitutional provision is of little value. . . .

"We have then before us the original Act, with lines drawn around part of the title, as already stated. Can we, looking only at the Act itself, as evidence of its contents, and remembering that the title is a part of the Act, give significance to these lines, and understand them to import that the words within them were stricken out? We think the reasons given by Judge MCPHERSON, in the Lehigh Valley Company's case, 39 Leg. Int. 210, are sufficient to show that this cannot be done."

Upon this branch of the case the opinion of the Supreme Court, by Mr. Justice GORDON, page 204, is as follows:

"The court held that these lines were to be disregarded, and that the title to the Act must be read as though they were not there. If the correctness of this construction be admitted, the conclusion arrived at cannot be gainsaid, for a title expressing an intention to tax corporations, associations, and partnerships only, necessarily excludes natural persons, hence, so much of the Act as provides for the taxation of the property of such persons would clearly, under this construction, be avoided by the constitutional provision. We cannot, however, assent to the reasoning by which a conclusion of this kind was reached. These marks are part of the original bill, as found upon the files in the Secretary's office, and at most imply only an irregularity; that is, that the bill

was not transcribed as it ought to have been before it was sent to the Governor for his signature. It is true, as the court suggests, some unauthorized person might have thus mutilated the bill after it was signed, but of this there is no evidence, and, in the absence thereof, we are not warranted in presuming a forgery. Other than this want of transcription there is neither irregularity nor mark of suspicion about this document. To those acquainted with legislative rules, the marks above mentioned would indicate an amendment properly made in either the House or Senate, and so, had the bill been transcribed, would the transcribing clerk have interpreted them, as did the compiler of the pamphlet laws.

"The eleventh joint rule requires that such an amendment, as that under discussion, be marked by brackets with a note of the legislative branch in which it is made, so that in the case in hand there is but an irregularity in the neglect to comply with a direction which, whilst it conduces to orderly legislation, is, in itself, of no material importance. Without evidence to the contrary, then, we must take it that these marks were made in the regular course of legislation, and that they indicate an amendment made, by striking out the words embraced within them, during the passage of the bill."

The foregoing case suggests, if it does not decide, the interesting and important question as to whether the title should accompany a bill in its passage through the Legislature. The learned author, Sutherland, in Statutory Construction, Section 91, quotes with approval from the above remarks of SIMONTON, P. J., and says: "It is during the passage of a bill that its title is intended by the Constitution to impart information to the public and to members of the Legislature of the general subject of legislation. To effectuate that intent the title should accompany the bill in all its stages through the process of enactment."

In Attorney-General v. Rice, 64 Mich. 385, it appeared that to an Act to organize the township of Ironwood, in the county of Ontonagon, it was objected that it had been substituted, after the time for introducing new bills had expired, for a skeleton bill, entitled "An Act to organize the township of Au Train;" that therefore the title of the bill as introduced did not express the object of the Act as passed. The court say: "We cannot extend the provisions of the Constitution beyond its express terms in this respect. If the object of the Act as passed is fully expressed in its title the form or status

of such title at its introduction, or during any of the stages of legislation before it becomes a law, is immaterial. To hold otherwise, would, in many cases, prevent any alteration or amendment of a bill after its introduction, as, in legislative practice, it frequently becomes necessary to amend the title as introduced in order to conform to changes in the bill. The title to a bill is usually adopted after it has passed the House, and it is not an essential part of a bill, although it is of a law: Larrison v. Peoria, etc., R. R. Company, 77 Ill. 17."

The facts stated in the contention were not accepted by the court, and it was held that, the journals not showing the facts, parol evidence was not admissible: Sutherland on Statutory Construction, Sec. 91; and see 23 Am. and Eng. Enc. of Law, 163; Bing v. Weber, 81 Ill. 290.

3. The Purpose of the Provision,

Was to avoid improper influences which might result from intermixing in one and the same Act such things as have no proper relation to each other, and to prevent the real purpose of the bill being disguised by a title which failed to express it, or was framed in such terms as to mislead.

The Constitution of New Jersey, Article IV, Section 7, Paragraph 4 is quoted in Blood v. Mercelliott, 53 Pa. St. 391-3, as indicating the purpose of the amendment of 1864 as follows:

"To avoid improper influences which may result from intermixing in one and the same Act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title."

The opinion further quotes, Parkinson v. The State, 14 Maryland, 185, as follows: "It cannot be doubted that this restriction upon the Legislature was designed to prevent an evil which had long prevailed in this State as it had done elsewhere, which was the practice of blending in the same law subjects not connected with each other and often entirely different. This was not unfrequently resorted to for the purpose of obtaining votes in support of a measure which could not have been carried without such a device. And in bills of multifarious character, not inappropriately called omnibus bills, provisions were sometimes smuggled in and passed in

the hurry of business toward the close of a session, which, if they had been presented singly would have been rejected."

"Prior to that date (1864) the vicious practice had obtained of incorporating in one bill a variety of distinct and independent subjects of legislation. The real purpose of the bill was often and sometimes intentionally disguised by a misleading title or covered by the all-comprehensive phrase, 'and for other purposes,' with which the title of many '*omnibus*' bills concluded. Members of the Legislature as well as the general public were thus misled or kept in ignorance as to the true character of proposed legislation. To remedy this great and growing evil the amendment in the first place prohibits the introduction of more than one subject in each bill. But, unity of subject is not enough. The mandatory clause of the amendment imperatively requires that the subject of proposed legislation, whatever it may be, shall be clearly expressed in the title of the bill. As the means of notice to representatives as well as their constituents the latter is quite as essential as the former. We are not called upon, however, to show the necessity or vindicate the wisdom of the constitutional requirement. It is enough for us to know that it is an express mandate of the organic law, which the Legislature ought to obey and courts are bound to enforce. While it may be difficult to formulate a rule by which to determine the extent to which the title of a bill must specialize its object, it may be safely assumed that the title must not only embrace the subject of proposed legislation, but also express the same so clearly and fully as to give notice of the legislative purpose to those who may be especially interested therein. Unless it does this it is useless:" Road in Phœnixville, 109 Pa. St. 44-8-9.

In Commonwealth v. Samuels, 163 Pa. St. 283-6, it is said, referring to the Act of June 8th, 1893, P. L. 393: "So far as appears in the title the Act is merely cumulative, in providing an additional county officer. It is true that the Constitution in enumerating county officers, Article XIV, Section 1, puts the two offices together in the disjunctive, 'auditors or controllers,' and that those who are familiar with the duties of controllers as existing in Philadelphia and Allegheny, would know that they are mainly the same as those of auditors in other counties, and therefore that the creation of the office of controller was likely to interfere with, if not to abolish, the other. But this is not the notice which the Constitution re-

quires the title of the Act to give of its subject. The object of that requirement is that legislators, and others interested, shall receive direct notice in immediate connection with the Act itself, of its subject, so that they may know or be put upon inquiry as to its provisions and their effect. Suggestions or inferences which may be drawn from knowledge *dehors* the language used, are not enough. The Constitution requires that the notice shall be contained in the title itself."

4. THE CONSTRUCTION OF THE PROVISION.

The general principle is applied that it must be a clear case to justify a court in pronouncing an Act, or any part of it, void for a defective title.[1] In Allegheny Home's Appeal,[2] the court remarked: "The course of decision in this court has been intended to carry out the true intent of the amendment of 1864, as to the title and subject of bills, instead of resorting to sharp criticism, which must often bring legislation to nought. The Amendment of 1864 was in substance proposed in the Constitutional Convention of 1837-8, and rejected, because it was feared it would render legislation too difficult and uncertain, and lead to litigation. It will not do, therefore, to impale the legislation of the State upon the sharp points of criticism, but we must give each title, as it comes before us, a reasonable interpretation, *ut res magis valeat quam pereat.*" Legislative usage has received a partial recognition; thus in State Line & Juniata R. R. Company's Appeal,[3] Mr. Justice PAXSON said in relation to an Act generally entitled a supplement to a former Act: "The amendment to the late Constitution, under which this question arises, Section 8 of Article XI, was adopted in 1864. An examination of the Pamphlet Laws since that time discloses the fact that one hundred and thirteen 'supplements' and 'further supplements' to railroad charters have been passed. Embracing other corporations, there are about fourteen hundred. This is important, not only as showing the extent of the interests to be affected by our decision, but also as exhibiting the uniform construction placed upon this section

by the legislative and executive departments of the government. While we are not bound by their construction, it is nevertheless entitled to weight, and should always be treated with respect. In view of this unbroken current of legislation, we are constrained so to treat this question as not to obliterate from our statute book a large number of Acts under which important and costly improvements have been commenced, and rights have become vested. The construction now claimed for this clause of the Constitution, if adopted by this court, would unsettle the business of the State to an extent beyond the capacity of any one to define. That we are not bound to do so is sufficiently clear both upon reason and authority."

The maxim *expressio unius est exclusio alterius* is applied in the construction of a title and the scope of the Act will be limited, when the title is specific, to what is therein expressed.[4] Thus, for example, where the title refers to leaseholds and the Act includes freeholds, it is inoperative as to the latter.[5] Where elections of public officers is expressed, elections to increase municipal debts will be excluded.[6] An examination of all the cases will indicate a liberal construction of title in the application of the constitutional provision where the purposes of the Act are for the general public benefit; and a strict construction where private or corporate privileges are asserted, or where the Act has a collateral effect upon interests not necessarily or apparently within the legislative purpose as disclosed by the title.

An error in the placing of the quotation marks in a supplementary Act reciting an original Act will not vitiate the title when the sense is clear.[7]

[1]Commonwealth v. Green, 58 Pa. St. 226.

[2]Allegheny Home's Appeal, 77 Pa. St. 77.

[3]State Line & Juniata R. R. Company's Appeal, 77 Pa. St. 429-431.

[4]Union Pass. Ry. Company's Appeal, 81* Pa. St. 91; Com-

monwealth v. Martin, 107 Pa. St. 185; Philadelphia v. Spring Garden Farmers' Market Company, 161 Pa. St. 522.

[5]Dorsey's Appeal, 72 Pa. St. 192.

[6]Evans v. Willistown Township, 168 Pa. St. 578.

[7]Commonwealth v. Taylor, 159 Pa. St. 451.

5. THE SCOPE OF THE ACT IS MEASURED BY THE TITLE.

Only that part of the law is void which is not referred to in the title,[1] thus in Allegheny County Home's Case,[2] the Act in question was entitled "An Act providing for an equitable division of property between the county of Allegheny and the city of Pittsburg."[3] Two sections related to the county and city named, the third section extended their provisions to Allegheny City in like manner as they applied to Pittsburg. The question arose on the first two sections, which were sustained without reference to the third, which was not necessarily involved. In Dewhurst v. City of Allegheny,[4] Mr. Justice PAXSON said: "The defendant below objects to paying the assessment upon his property for the grading and paving of Troy Hill Road, in the city of Allegheny, for various reasons, the first of which is, that the Act of Assembly of May 10th, 1871, authorizing the same, and the supplement thereto approved April 1st, 1872, are unconstitutional, and the assessments thereunder null and void. In Beckert v. The City of Allegheny, 4 Norris, 191, so much of said Act was declared to be unconstitutional as provided for the assessment of a part of the cost of the work upon property in Reserve Township, which said township is located wholly in Allegheny County and outside the city limits. The title of said Act was 'An Act relative to grading, paving, curbing, and otherwise improving Troy Hill Road in the city of Allegheny,' and this was held not to be notice to property-owners in Reserve Township that their property was to be assessed for the cost of the improvement. There was nothing in that case, however, to throw the slightest doubt upon the constitutionality of any part of the Act except in so far as it re-

lated to Reserve Township. It is no injury to the defendant that property-owners in the township have escaped. Their burdens have not been thrown upon his property, but have been very properly assumed by the city of Allegheny. His benefits are the same whether Reserve Township pays or not; his burden is only increased by his share of general taxation, and of this he has no cause to complain: Bidwell v. City of Pittsburg, 4 Norris, 491. An entire Act is not necessarily unconstitutional because the title fails to give notice of some particular matter contained therein. The rule has been to sustain the portion of which the title gives notice: Dorsey's Appeal, 22 P. F. Smith, 192; Allegheny County Home's Appeal, 27 Id. 77; Lea v. Bumm, 2 Norris, 237; Wynkoop v. Cooch, 8 Id. 450."

In McGee's Appeal,[5] the Act in question was "An Act to authorize the Select and Common Councils of the city of Pittsburg to vacate streets and alleys in said city."[6] In the opinion it was said the vacation of Washington Street, or the ordinance stipulating for its vacation is the precise matter complained of. If it be conceded, however, that the title does not fully cover the subject of the Act it is only those provisions not covered by it that are void.

[1]Per SHARSWOOD, J., in Commonwealth v. Green, 58 Pa. St. 226, a case wherein the title was held to be sufficient.

[2]Allegheny County Home's Appeal, 77 Pa. St. 77.

[3]25th April, 1871, P L. 1138.

[4]Dewhurst v. City of Allegheny, 95 Pa. St. 437.

[5]McGee's Appeal, 114 Pa. St. 470-478.

[6]April 15th, 1869, P. L. 965; and see Allegheny v. Moorehead, 80 Pa. St. 118; Washington Borough v. McGeorge, 146 Pa. St. 248, 251; Act of April 22d, 1889, P. L. 39, authorizing boroughs to license hacks, etc.

The Act of June 26th, 1895, P. L. 317, known as the "Pure Food Law," was enforced in a case of adulteration of food, and the rule was applied which holds so much of an Act to be valid as is covered by the title: Commonwealth v. Wick-

ert, 19 C. C. R. 251; S. P., Commonwealth v. Hartman, 6 P. D. R. 136. In Commonwealth v. Curry, 4 Super. Ct. 356, the title was held to be sufficient.

6. THE SUBJECT MUST BE CLEARLY EXPRESSED.

Thus an Act, the title of which purports to authorize a railway company to lay additional tracks, does not clearly express the intent disclosed in the body of the Act to authorize it to lay an extension of its line;[1] upon this point Mr. Justice AGNEW said: "When the title conveys the belief that one subject is the purpose of the bill, while another and different one is its real subject, it is evident that it tends to mislead by diverting the attention from the true object of the legislation. Confiding in the title as applicable to a purpose unobjectionable to the reader he is led away from the examination of the body of the bill. In such a case the subject is not *clearly expressed* in the title. Indeed, it is not expressed at all. It may have something colorable in it, but this is merely hinting at the subject, not expressing it. To lay additional tracks on an existing railway is a different thing from extending the railway itself into new territory not before authorized to be used. The difference in purpose is so palpable, and the difference in consequence so grave the mind cannot hesitate a moment in the conclusion that the language which authorizes the former only cannot mean to sanction the latter. To confound these two is to open the door to fraud, and to enable men, expert in the use of phrases, to steal away the rights of the people; and this it was a purpose of the amendment to prevent." . . . "How, then, will the same language in this title be held to 'clearly express' a purpose to extend this railway into new streets and along other lines of railway? If it be said the Legislature *might* have meant this, the obvious answer is, that this is a mere possibility, a conjecture, not a clear expression of the intent. Nothing ambiguous can be said to be clear, and this is a decisive answer to the argument that the title is sufficient to

lead to inquiry. An inquiry into a dubious or uncertain thing is not the purpose of the amendment. Its requirement is that the subject shall be clearly expressed." The same thought was substantially repeated in Dorsey's Appeal,[2] where it is said: "It would not do to require the title to be a complete index to the contents of the bill, for this would make legislation too difficult, and bring it into constant danger of being declared void. But on the other hand the title should be so certain as not to mislead. The language of the amendment is 'one subject which shall be *clearly expressed* in the title.' To be 'clearly expressed' certainly does not mean something which is dubious, and therefore is not clearly expressed. If then the title seems to mean one thing while the enactment as clearly refers to another, it cannot be said to be clearly expressed. Now in the present case the words *leasehold estates* certainly do not express estates of freehold."

Where, however, the term railway is used, which may import either a steam railroad or a street passenger railway, or both, if in the plural, it cannot be said that the title is not clear where the Act applies to a railroad incorporated to carry freight and passengers, and use steam as a motive power.[3]

A title which purports the creation of the office of County Controller in certain counties does not clearly indicate a purpose to abolish the office of County Auditors. The fact that the Constitution places "Auditors or Controllers" together in the disjunctive in Article XIV, Section 1, and the fact that the Controllers of Philadelphia and Allegheny Counties perform practically the same duties as Auditors in other counties is not sufficient to lead to notice that the creation of the office of Controller was likely to interfere with, if not to abolish, the office of County Auditors.[4]

The Act of April 22d, 1879, P. L. 30, entitled "An Act extending the powers and authority of County Auditors, authorizing them to settle, audit, and adjust the accounts of

the Directors of the Poor of the several counties of the Commonwealth," clearly expresses in its title the subject-matter.[5]

[1]Union Passenger Railway Company's Appeal, 81* Pa. St. 91.

[2]Dorsey's Appeal, 72 Pa. St. 192.

[3]Millvale Borough v. Evergreen Passenger Railway Company, 131 Pa. St. 1.

[4]Commonwealth v. Samuels, 163 Pa. St. 282; Commonwealth v. Severn, 164 Pa. St. 462; Commonwealth v. Samuels, 14 C. C. R. 423, opinion of court below; Commonwealth v. Severn, 15 C. C. R. 249, opinion of court below.

[5]Nason v. School Directors, 126 Pa. St. 445.

The sufficiency of the title of the Act of May 12th, 1897, P. L. 56, entitled "An Act taxing gifts, legacies, and inheritances in certain cases and providing for the collection thereof," was questioned but not decided: Portuondo's Estate, 19 C. C. R. 419; s. c., 6 P. D. R. 462.

The Act of May 22d, 1895, P. L. 111, properly construed creates no lien for taxes, but if this were otherwise the title is insufficient for that purpose: Kenner v. Kelly, 19 C. C. R. 348; Taylor v. Bowling, 5 P. D. R. 605; Land v. Wack, 5 P. D. R. 606; Rutt v. Burkey, 14 Lanc. L. R. 11; Snyder v. Mogart, 17 C. C. R. 1; Wetzel v. Goodyear, 5 P. D. R. 605; Fryer v. Metz, 12 Montg. 108; Frampton's Estate, 18 C. C. R. 462. But the notice provided for will charge the fund if duly given. The Act was intended to cover two classes of cases; first, where there was a lien for taxes under pre-existing laws; second, where there was none, in which case the provision for notice was operative to create a charge pursuant to the notice: Provident Association v. Flanagan, 19 C. C. R. 529.

The Act of June 26th, 1895, P. L. 317, entitled "An Act to provide against the adulteration of food and provide for the enforcement thereof," has a sufficient title to cover all of its provisions: Commonwealth v. Curry, 4 Super. Ct. 356; Commonwealth v. Hufnal, 4 Super. Ct. 301; and see Commonwealth v. Wickert, 19 C. C. R. 251; Commonwealth v. Curry, 18 C. C. R. 513; Commonwealth v. Hartman, 6 P. D. R. 136.

7. Fair Notice of the Scope of the Subject of the Act Must be Given.

All the cases agree that the subject of the proposed legislation must be so expressed in the title as to give notice of its purpose to the members of the Legislature and to others specially interested.[1] If the title gives notice of the subject of the Act so as reasonably to lead to an inquiry into the body of the bill, it is all that is necessary.[2]

[1]Philadelphia v. Ridge Avenue Passenger Railway Company, 142 Pa. St. 484-491; citing Commonwealth v. Green, 58 Pa. St. 226; Dorsey's Appeal, 72 Pa. St. 192; Beckert v. Allegheny, 85 Pa. St. 191; Phœnixville Road, 109 Pa. St. 44; Sewickley Borough v. Sholes, 118 Pa. St. 165; see also Allegheny County Home's Case, 77 Pa. St. 77; State Line & Juniata R. R. Company's Appeal, 77 Pa. St. 429.

[2]State Line & Juniata R. R. Company's Appeal, 77 Pa. St. 429; Esling's Appeal, 89 Pa. St. 205-210; Blood v. Mercelliott, 53 Pa. St. 391; Church Street, 54 Pa. St. 353; Dorsey's Appeal, 72 Pa. St. 192; Mauch Chunk v. McGee, 81 Pa. St. 433; Carothers' Appeal, 118 Pa. St. 468.

Numerous cases, beginning with Commonwealth v. Green, state that the title of an Act of Assembly is not intended to be an index to its contents: Commonwealth v. Green, 58 Pa. St. 226.

The Act of May 6th, 1887, P. L. 84, entitled "An Act to prevent and punish the making and dissemination of obscene literature and other immoral and indecent matter," has a sufficient title. "It states the general subject of the bill, and gives sufficient notice of its contents and object."—Per Ewing, J.: Commonwealth v. Havens, 6 C. C. R. 545.

8. The Title Must be in Terms Sufficiently Specific.

Thus, the title of an Act, entitled "An Act to incorporate the Manufacturers' Improvement Company," was held to be too general, and in effect misleading, as no indication was

given either in the name of the corporation or otherwise, of provisions relating to the power in the Act expressed over the Loyalsock Creek, a public navigable stream, in improving it and charging tolls for logs.[1] But the title of an Act, entitled "An Act to incorporate the Empire Contract Company and define the powers thereof," is probably sufficient to cover the power of eminent domain. In passing upon this title, Mr. Justice WILLIAMS said: "Speaking for myself, I would hold the title to be neither insufficient nor misleading." It was decided that the power of eminent domain in question was well derived from the provisions of another statute.[2] Thus an Act, entitled "An Act relating to the Ridge Avenue Passenger Railway Company," is too general to indicate a provision relieving the company from a liability to keep streets in repair,[3] and in another case the title was held insufficient to cover a provision reducing the rate of taxation of dividends for city purposes.[4] The title of the Act of May 13th, 1887, P. L. 108, entitled "An Act to restrain and regulate the *sale* of vinous and spirituous, malt, or brewed liquors, or any admixture thereof," was held to be sufficient to sustain the clause of Section 17 of the Act, prohibiting the furnishing of liquors to minors, persons of known intemperate habits or persons visibly affected by intoxicating drink, by sale, *gift*, or otherwise.[5]

[1]Rogers v. Manufacturers' Improvement Company, 109 Pa. St. 109.

[2]Carothers's Appeal, 118 Pa. St. 468.

[3]Ridge Avenue Passenger Railway Company v. Philadelphia, 124 Pa. St. 219.

[4]Philadelphia v. Ridge Avenue Passenger Railway Company, 142 Pa. 484.

[5]Commonwealth v. Silverman, 138 Pa. St. 642; and see Donley v. Pittsburg, 147 Pa. St. 348.

The Act of March 16th, 1872, P L. 405, was entitled "An Act relating to the County Commissioners of Cambria County." It was objected to "for the reason that the title

does not indicate that which is embraced in the body of the Act itself." The title was held to be sufficient to give notice of any legislation properly pertaining to the rights, duties, and powers of the Commissioners. All its provisions were held to be germane to a single subject: Commonwealth v. Lloyd, 2 Super. Ct. 6; S. P., Commonwealth v. Dillon, 17 C. C. R. 227; and see Bennett v. Maloney, 4 Kulp, 537.

The Act of January 2d, 1871, P. L. 1556, was entitled "A further supplement to the Act incorporating the city of Harrisburg in the county of Dauphin, passed April ninth, one thousand eight hundred and sixty-nine." His Honor, Judge PEARSON, said: "We consider the title of this Act the same as none," because no indication of the subject of the supplement was given: In re State St., 2 Leg. Chron. 1 (1873).

9. THE TITLE MUST NOT BE INCONSISTENT WITH THE ENACTMENT.

The Act of May 14th, 1874, P. L. 158, was entitled "An Act to exempt from taxation public property used for public purposes and places of religious worship, places of burial not used or held for private or corporate profit and institutions of purely public charity," and contained a proviso that all property, real or personal, other than that which is in actual use and occupation for the purposes aforesaid, and from which any revenue or income is derived, shall be subject to taxation, except when exempted by law for State purposes, and nothing herein contained shall exempt the same from taxation. This proviso upon a construction given in a previous case,[1] having been held to impose taxation, it was held that taxation was not properly the subject of the Act as expressed in the title, namely, exemption, and that the proviso was therefore void.[2]

The Act of May 19th, 1893, P. L. 108, entitled "An Act to amend an Act, entitled a supplement to an Act, entitled 'An Act for acknowledging deeds,' passed March 18th, 1775, requiring the recording of certain conveyances and designating the time within which they shall be recorded," is ineffective in those provisions which relate to the manner of taking

acknowledgments and to the powers of officers in relation thereto. "An attempt to remodel the law relating to acknowledgments under such a title would be an attempt to do that of which the title not only gave no notice but against which it closed the door by asserting a different purpose."[3]

[1]County of Erie v. Commissioners of Water Works, 113 Pa. St. 368.

[2]Sewickley Borough v. Sholes, 118 Pa. St. 165; and see Perkins v. Philadelphia, 156 Pa. St. 554, 156 Pa. St. 539.

[3]Davey v. Ruffell, 162 Pa. St. 443.

The Act of April 9th, 1870, P. L. 1068, was entitled "An Act to punish the sale and traffic in mineral water bottles and other bottles, and for the protection of bottlers and venders of mineral water and other beverages in this Commonwealth." In the second section of the Act there was a proviso that the Act should "apply only to the city of Philadelphia," the title was held to be misleading and insufficient, in a case arising in Philadelphia, by reason of the difference between the title and the proviso relating to the territorial scope of the Act: Commonwealth v. Farley, 6 C. C. R. 433, 46 Leg. Int. 108.

In Swaney v. Washington Oil Company, 7 C. C. R. 351, the sufficiency of the title of the Act of June 17th, 1887, P. L. 409, entitled "An Act relating to the liens of mechanics, laborers, and others upon leasehold estates and property thereon," was doubted. In McKeever v. Victor Oil Company, 9 C. C. R. 284, the title was held to be insufficient because it did not create a lien upon leaseholds, but only upon the property therein specified upon the leaseholds, and because the title was silent as to the extraordinary remedy provided in Section 5 to prevent the removal of the property off the leasehold after a lien was entered. In Titus v. Elyria Oil Company, 1 P. D. R. 204, the same title was also held to be insufficient. The Act of June 3d, 1885, P L. 55, entitled "An Act for the suppression of lottery gifts by store-keepers and others to secure patronage," is insufficient in title in so far as it undertakes to prohibit the giving of tickets entitling the holders to money or articles of value as inducements to purchasers, because the phrase "lottery gifts" does not em-

brace anything which is free from chance or hazard: Commonwealth v. Moorhead, 7 C. C. R. 513.

The Act of June 1st, 1883, P. L. 52, entitled "An Act to protect miners in the bituminous coal regions of this Commonwealth," in its third section imposed a penalty for the false weighing of coal. It was held that the provisions of the third section were not covered by the title because the protection contemplated or suggested by the title is that relating to the dangers of the occupation, and not that relating to the misdemeanors mentioned in the third section: Commonwealth v. Hartzell, 17 C. C. R. 91, 5 P. D. R. 148.

10. The Title Must Indicate the Effect of the Act in Relation to Persons or Matters not Necessarily Affected by the General Legislative Purpose.

This may be first illustrated by cases involving titles restricted in expression, but the rule is well established, and has been adhered to in numerous cases where the title is general in expression. Thus an Act relating to liens of mechanics, material men, and laborers upon leasehold estates and property thereon was limited to such leasehold estates, and freehold estates, which were within the purview of the enacting words, were excluded from its operation.[1] Thus, an Act, entitled "An Act providing for an equitable division of property between the county of Allegheny and the city of Pittsburg," was ineffective in relation to the city of Allegheny.[2] Thus, an Act relating to grading, paving, and otherwise improving Troy Hill Road in the city of Allegheny was inoperative as to that portion of Troy Hill Road extending beyond the city limits.[3] Thus an Act generally entitled "An Act relating to boroughs in the county of Chester," contained a repealing clause, which in effect shifted the payment of damages for opening roads from boroughs upon the county. It was held ineffective for that purpose. In this case, Mr. Justice Sterrett said: "The mandatory clause of the amendment imperatively requires that the subject of proposed legislation, whatever it may be,

shall be clearly expressed in the title of the bill. As the means of notice to representatives as well as their constituents the latter is quite as essential as the former. We are not called upon, however, to show the necessity or vindicate the wisdom of the constitutional requirement. It is enough for us to know that it is an express mandate of the organic law which the Legislature ought to obey and courts are bound to enforce. While it may be difficult to formulate a rule by which to determine the extent to which the title of a bill must specialize its object, it may be safely assumed that the title must not only embrace the subject of proposed legislation, but also express the same so clearly and fully as to give notice of the legislative purpose to those who may be specially interested therein. Unless it does this it is useless."[4] Thus, where an Act entitled "An Act to incorporate the Manufacturers' Improvement Company" attempted to destroy the status of a navigable stream as a public highway, and to authorize the taking of tolls for floating logs, the title was held insufficient.[5] Where an Act entitled as relating to assessment of lands divided by county lines contained provisions relating to lands divided by township or borough lines, it was held ineffective as to the latter.[6] In so far as an Act entitled "An Act authorizing the Town Council of the borough of Carlisle to establish a Board of Health," provided for the payment of expenses by the county of Cumberland, it was held to be insufficient.[7] The Act of June 8th, 1893, entitled "An Act creating the office of County Controller in counties of this Commonwealth containing 150,000 inhabitants and over, prescribing his duties," was held to be defective in title, in that there was no indication of the purpose and effect of the Act to abolish the office of County Auditors.[8] The title of an Act, entitled "An Act to perfect the records of deeds, mortgages, and other instruments in certain cases," is insufficient to give notice that the fees, incidents to the work, were to be a charge upon the several counties.[9] The title of an Act entitled "An Act to enable

the Board of School Directors of the borough of Coudersport in the county of Potter, to establish and maintain a graded school" is insufficient to cover a provision as to the annexation of the territory of a certain road district named in the Act to the school district.[10]

In Smith v. Reading Street Passenger Railway[11] it was doubted whether the Act of March 22d, 1887, P. L. 8, entitled "An Act to provide for the incorporation and regulation of motor power companies for operating railways by cable, electric, or other means," was sufficient in title to validate a provision authorizing such companies to lease the property and franchise of passenger railway companies and operate them. In this case, Mr. Justice WILLIAMS said: "It will be seen that the title to this Act gives no hint of a purpose to enlarge the powers of city passenger railways. It is also very clear that there is no express provision in the Act itself that makes such enlargement, or undertakes to do so. The question raised is whether such enlargement of the powers of city passenger railways results by necessary implication from the grant of power to motor companies contained in the eighth subdivision of the first section of the Act of 1887? This is a question of much practical importance in the present state of legislation on this subject, and it is beset with serious difficulty." This case was an appeal from a decree refusing a preliminary injunction. The decree was affirmed, the decision of the question being deferred until final hearing.

An Act to provide for the incorporation and government of cities of a certain class is sufficient in title to embrace a provision authorizing the annexation of adjacent territory.[12]

The Act of June 30th, 1885, P. L. 187, entitled "An Act to regulate the collection of taxes in the several boroughs and townships of this Commonwealth," was held applicable to the collection of county taxes. Upon this point the court below said: "But we take the words 'boroughs and townships of this Commonwealth' were meant to and do include all the

territory and counties in the State. Boroughs and townships are the territorial divisions and points by which County Commissioners levy and collect taxes under the general laws of the State . . . these were the limits of each county's duplicate and collector before, as well as since, the Act of 1885." After stating the provisions of that Act, the court added: "These provisions, together with long usage, the title of the Act 'boroughs and townships of this Commonwealth' fairly imply that county taxes were meant and intended, they are pertinent to and properly included in the words 'boroughs and townships.'" The decree was affirmed without an opinion. The case arose upon an appeal from the decree of the court below refusing a preliminary injunction.[13] In Commonwealth v. Lyter,[14] which arose upon the same Act, Mr. Justice FELL said: "The precise question here raised was considered in Bennett v. Hunt, and the constitutionality of the Act of 1885 was distinctly affirmed."

[1]Dorsey's Appeal, 72 Pa. St. 192.

[2]Allegheny Home's Case, 77 Pa. St. 77.

[3]Beckert v. City of Allegheny, 85 Pa. St. 191.

[4]Road in Phœnixville, 109 Pa. St. 44; and see Oxford Borough St., 2 P. D. R. 327.

[5]Rogers v. Manufacturers' Improvement Company, 109 Pa. St. 109; and see Ridge Avenue Passenger Railway Company v. Philadelphia, 124 Pa. St. 219, 23 W. N. C. 324; Philadelphia v. Ridge Avenue Passenger Railway Company, 142 Pa. St. 484, 6 C. C. R. 283; Philadelphia v. Spring Garden Farmers' Market Company, 161 Pa. St. 522.

[6]La Plume v. Gardner, 148 Pa. St. 192, affirming 2 Lack. Jur. 28; and see Cassel's Appeal, 8 Lanc. Law. Rev. 260; Ruth's Appeal, Id. 264, 1 Lack. Leg. Rec. 311, 10 W. N. C. 498.

[7]Quinn v. Cumberland County, 162 Pa. St. 55.

[8]Commonwealth v. Samuels, 163 Pa. St. 282, 14 C. C. R. 423; Commonwealth v. Severn, 164 Pa. St. 462, 15 C. C. R. 249.

[9]Gackenbach v. Lehigh County, 166 Pa. St. 448; Pierie v. Philadelphia, 139 Pa. St. 573, 27 W. N. C. 285, affirming 47 L. I. 154.

[10]Payne v. School District, 168 Pa. St. 386.

[11]Smith v. Reading City Passenger Railway Company, 156 Pa. St. 5; s. c., 13 C. C. R. 49, 2 P. D. R. 490.

[12]Harris's Appeal, 160 Pa. St. 494.

[13]Bennett v. Hunt, 148 Pa. St. 257.

[14]Commonwealth v. Lyter, 162 Pa. St. 50, 34 W. N. C. 393; and see Commonwealth v. Geesey, 1 Super. Ct. 502; Sanderson v. Commissioners, 7 C. C. R. 342; Commonwealth v. Commissioners, 7 C. C. R. 173; s. c., 133 Pa. St. 180.

In Little Equinunk & Union Woods Turnpike Company, 2 C. C. R. 632, the title of the Act of June 25th, 1885, P. L. 170, entitled "An Act authorizing the acquisition of turnpike roads or highways heretofore or hereafter constructed near or through any borough or township in this Commonwealth upon which tolls are charged the traveling public," was held to be insufficient; said the court: "The title to this Act of 1885 is more clearly in conflict with the constitutional requirements than any of those considered in the Pennsylvania cases. It does not clearly express the subject of the bill, it is misleading, it is untrue, and if the constitutional provision means anything or is to serve any purpose whatever, this Act of Assembly falls under its condemnation. . . . The title contains no hint that counties are in any way affected by, or interested in, the subject of the bill, but, on the contrary, directs attention exclusively to boroughs and townships, while the Act itself contains no reference to boroughs or townships, but as one of its most important features imposes upon counties the expenses of the proceedings and damages which may be assessed in favor of the owners of turnpikes, etc., when condemned."—SEELY, P. J., and see Carbondale & Prov. Turnpike, 17 W. N. C. 310; s. c., 4 Lanc. Law Rev. 361; and s. c., 22 W. N. C. 105, in which the Supreme Court said that the constitutionality of the Act was more than doubtful, but if it were otherwise it is superseded by the Act of June 2d, 1887, P. L. 306.

The title of the Act of May 9th, 1889, P. L. 162, entitled "An Act to provide for the appointing of deputy coroners

in the several counties of this Commonwealth," is insufficient, in that it fails to give notice as to how such officers are to be appointed and paid: Commonwealth v. Grier, 9 C. C. R. 444.

The Act of June 9th, 1891, P. L. 248, entitled "An Act to amend the eighth section of the Act, entitled 'An Act to restrain and regulate the sale of vinous and spirituous, malt and brewed liquors, or any admixture thereof, approved May 13th, 1887, providing that the license money shall be paid into the treasury of the city, county, borough, and township wherever the licensed places are situated, and increasing the amount of license to be paid in cities of the first and second class," is insufficient in title in so far as it requires commissions of the treasurer to be paid for the use of the county, because the title to the Act fails to give notice of its effect upon the compensation of the treasurer: South Bethlehem v. Hemingway, 16 C. C. R. 103.

The Act of June 6th, 1893, P. L. 328, entitled "An Act providing for the relief of needy, sick, injured, and in case of death, burial of indigent persons whose legal place of settlement is unknown," is insufficient in title. The effect of the Act was to remove certain liabilities of poor districts and place them upon counties, and to make the county liable to the poor district without an order of relief, which effect was not indicated in the title: Poor District v. Clearfield County, 16 C. C. R. 554; s. c., 4 P. D. R. 584; Poor District v. Luzerne County, 17 C. C. R. 83, 5 P. D. R. 183.

The Act of May 9th, 1871, P L. 639, entitled "An Act relating to streets in the several boroughs of Montgomery County," has a sufficient title. Mr. Justice GORDON, delivering the opinion of the Supreme Court, held that the Act properly construed did not in effect impose the damages upon the county, but that if it did it would have offended the constitutional provision as to titles of Acts of Assembly. Mr. Justice PAXSON filed an opinion, holding that the Act did in effect require payment of damages by the county, but that the title was sufficient nevertheless. In this opinion Mr. Justice GREEN concurred. Either view resulted in affirming the judgment: Street in Royersford, 2 Montgomery County Law Rep. 153 (1886).

The Act of January 2d, 1871, P. L. 1856, entitled "A further supplement to an Act incorporating the city of Harrisburg, in the county of Dauphin, passed April ninth, one thousand eight hundred and sixty-nine," has an insufficient

title. It provided, among other things, that the county of Dauphin should build and keep in repair a certain bridge in the city: In re State Street, 2 Leg. Chron. 1.

The title of the Act of March 29th, 1872, P L. 651, entitled "A supplement to an Act, entitled 'An Act authorizing the supervisors of New Castle Township, Schuylkill County, to make, repair, and keep in good order and condition the public roads, bridges, and culverts in said township,'" has an insufficient title, in so far as the Act relates to Mahanoy Township: Philadelphia v. Donahew, 5 Leg. Gaz. 22, 1 Leg. Chron. 45.

The Act of March 3d, 1868, P L. 263, entitled "An Act relative to the borough of Oxford, in the county of Chester, to enable the borough authorities to widen Third Street, and relative to the opening, widening, straightening, and arranging the line of new buildings on the same in said borough," has an insufficient title as to section 2, which imposes damages on the county: Nutt's Avenue, 2 Chester County, 49.

11. The Subject Must be Single.

"An Act to increase the boundaries of Forest County," may properly provide for a change of the county seat; the two provisions form but one subject, or rather, are parts of the same subject. In this case, Mr. Justice Read said: "The Act before us is not open to the objection that it is an *omnibus* bill and blends in the same law subjects not connected with each other or entirely different. Nor could any improper influence result from combining the provisions contained in it, for the objects in it are parts of the same enterprise, and neither the Legislature nor the public would be misled by the title. The subject of the Act was the enlargement of the county, by the addition of new territory, and this naturally included a relocation of the county seat. If this could not be done in one Act, then two Acts must have been passed, one to enlarge the county, and the other to locate the county seat. If it had been the location of a new county, then provision must have been made for the county seat, and this shows the two provisions form but one subject, or rather

are parts of the same subject."[1] A provision, in a supplement to an Act "to open and straighten" certain named streets, for the assessment of damages, is a part of one subject, to wit, the opening and straightening of the streets.[2] In Dorsey's Appeal,[3] Mr. Justice AGNEW said: "The word 'subject' has a large signification, often embracing different kinds, different classes, and various modes, all belonging to the general subject. The word *estates* is itself an example, embracing fees, fee tails, estates for life, and estates for years, commonly called leaseholds. Had the qualifying term 'leaseholds' been omitted in this title, all the various kinds of estates of freehold would have been comprehended within the title, and the sale of a freehold interest under the lien would have been good. Mere generality of meaning in the title ought not to avoid a law. For instance the title, 'An Act relating to executions,' is quite general as an expression of the subject of the Act, yet no one could doubt the power of the legislation, under this title, to provide for the various kinds of executions generally comprised within the term execution, as for example writs of *fieri facias*, *liberari facias*, *levari facias*, *venditioni exponas*, etc. But a restriction in a title which tends to mislead, stands on a different footing." In Road in Phœnixville,[4] Mr. Justice STERRETT said: "In determining the unity of a subject regard must, of course, be had to the ultimate object to be attained. Details leading to the accomplishment of that object are cognate to the subject of legislation, and therefore form a part thereof." The title of the Act of March 31st, 1876, to carry into effect Section 5, Article XIV, of the Constitution relative to the salaries of county officers is sufficiently comprehensive to cover the definition of who shall be deemed a county officer, in this case the Controller of Philadelphia. Chief Justice MERCUR said: "The designation of those officials who should be considered county officers was a natural corollary of the title and proper to give due effect to that part of the Constitution which the Act proposes to enforce. All the provisions of the Act relate,

and are cognate, to the purpose stated in the title."[5] The Act of June 2d, 1870, P. L. 1318, entitled "An Act to authorize turnpike, plankroad, and canal companies to issue bonds and to secure the same by mortgage, and to abandon portions of their roads and lines for public use," contains but one subject. The opinion gives no explicit answer to the argument that the Act really embraced several subjects, but merely points out that the title clearly expressed the purpose of the law.[6] The organization, government, and management of an insane asylum are but one subject.[7] The title of the Act of May 8th, 1889, P. L. 133, viz.: "An Act dividing the cities of this State into three classes, . and designating the mode of ascertaining and changing the classification thereof . " is sufficient to cover a section designating when the new offices shall be filled by election, and when the terms of superseded officers shall cease.[8] In Pennsylvania R. R. Company v. Riblet,[9] a distinction was marked between the legislative intent as manifested by the title and the legislative subject and purpose as manifested by the law itself. It was argued in that case that the title showed an intention to protect the farmers, the Act relating to the fencing of railroads, and not the public generally. Mr. Justice SHARSWOOD said: "If the Act itself is within the scope of the lawmakers' authority, it must stand, and we are bound to make it stand, if it will, upon any intendment. It is its effect, not its purpose, which must determine its validity."

The title of the Act of May 22d, 1895, P. L. 106, entitled "An Act amending Section 9 of an Act, entitled 'An Act in relation to the laying out, opening, widening, straightening, extending or vacating streets and alleys, and the construction of bridges in the several municipalities of this Commonwealth, the grading, paving, macadamizing, or otherwise improving streets and alleys, providing for ascertaining the damages to private property resulting therefrom, the assessment of damages, costs and expenses thereof upon the property benefited, and the construction of sewers and payment

of the damages, costs, and expenses thereof, including damages to private property resulting therefrom," approved May sixteenth, Anno Domini one thousand eight hundred and ninety-one, enabling municipal corporations to lay out, open, widen, extend, and vacate streets, or alleys, upon petition or without petition of property-owners," is sufficient. The objection seems to have been that the Act related to more than one subject.[10]

[1]Blood v. Mercelliott, 53 Pa. St. 391.

[2]In re Church Street, 54 Pa. St. 353.

[3]Dorsey's Appeal, 72 Pa. St. 192.

[4]In Road in Phœnixville, 109 Pa. St. 44.

[5]Taggart v. Commonwealth, 102 Pa. St. 354.

[6]Fredericks v. Pennsylvania Canal Company, 109 Pa. St. 50.

[7]Clearfield County v. Cameron Township Poor District, 135 Pa. St. 86.

[8]Commonwealth v. Wyman, 137 Pa. St. 508.

[9]Pennsylvania R. R. Company v. Riblet, 66 Pa. St. 164; and see In re Arrott Street, 18 W. N. C. 121.

[10]Dorrance v. Dorranceton, 181 Pa. St. 164.

The title of the Act of March 22d, 1887, P. L. 8, entitled "An Act for the protection of livery stable keepers," is sufficient. That some of the sections of the Act provide for civil liability and some for criminal does not make it embrace two subjects: Commonwealth v. Moore, 2 Super. Ct. 162; s. c., 4 P. D. R. 649; 16 C. C. R. 481, 1 Lack. Leg. N. 267; and see Commonwealth v. Lehr, 16 C. C. R. 532. In these cases the lower courts held the title to be insufficient.

The Act of May 24th, 1887, P. L. 204, entitled "An Act dividing cities of this State into seven classes, providing for the creation and division of wards therein and the annexation of adjacent territory thereto, prescribing general regulations relative to the passage of ordinances and giving out of contracts, the management of finances, the terms and duties of officers, and the punishment of certain offenses in all of said cities, and providing for the incorporation and government of cities of the fourth, fifth, sixth, and seventh classes," has a

sufficient title: Shoemaker v. Harrisburg, 4 C. C. R. 86. This Act was held invalid as a classification Act: In re Grant Street, 121 Pa. St. 596; Ayars' Appeal, 122 Pa. St. 266; Shoemaker v. Harrisburg, Id. 285; Berghaus v. Harrisburg, Id. 289; Klugh v. Harrisburg, Id. 289; Meadville v. Dickson, 129 Pa. St. 1. It seems that cities of divers classes may be legislated for at the same time and in the same Act. In Wheeler v. Philadelphia, 77 Pa. St. 338, the title of the Act of May 23d, 1874, P. L. 230, was objected to on the ground that the object of the Act was not clearly expressed in the title. This objection was overruled. The title of the Act was "An Act dividing the cities of this State into three classes, regulating the passage of ordinances, providing for contracts for supplies and work for said cities, authorizing the increase of indebtedness, and the creation of a sinking fund to redeem the same, defining and punishing certain offenses in all of said cities, and providing for the incorporation and government of cities of the third class." It is a further subject of remark that the said Act in Section 41, under the head of schools and school controller, provided that the said cities of the third class should constitute one school district, and made further provision as to the powers of controllers, their management of schools, their election, the filling of vacancies in, and the organization of, the board, etc. It may be questionable whether legislation with reference to the public schools is germane to the subject of the incorporation and government of cities. See Chalfant v. Edwards, 173 Pa. St. 246; and also Gaston v. Graham, 18 C. C. R. 265; Gaston v. Meadville, 5 P. D. R. 549; Baker v. McKee, 6 P D. R. 599; reported since the foregoing was written.

The Act of May 6th, 1872, P. L. 1163, entitled "An Act to authorize the opening and paving of certain portions of Fifteenth, Sixteenth, and Norris Streets," has a sufficient title: Commonwealth v. Dickinson, 30 Leg. Int. 53, reversing Commonwealth v. Dickinson, 9 Phila. 561. The Act of March 25th, 1873, P. L. 330, entitled "An Act to authorize the laying out, opening, and laying of water pipes in Volkmar Street, in the city of Philadelphia," contains but one subject: Commonwealth v. Clovis & Dickinson, 1 W. N. C. 185.

The Act of April 20th, 1876, P L. 43, relating to appeals from justices of the peace in cases of recovery for wages of manual labor has but one subject: Cochran v. McKelvy, 25 P. L. J. 120.

12. The Act May Properly Include Matters Germane to the Subject Expressed in the Title.

Pertinent details, provisions relative to the mode of accomplishing the legislative purpose, although the things in themselves may be diverse, if congruous, naturally connected, cognate, or germane may be included. These terms all indicate the same idea, and the subject-matter being considered, the test is one of common sense and not strict logic. The changing of the county seat is germane to the subject of changing the county boundaries, the latter being expressed in the title.[1] So is the assessment of damages when the opening and straightening of streets is expressed.[2] So are provisions as to the appointment of a clerk and the summoning of a grand jury where the establishment of a court of criminal jurisdiction is expressed.[3] Persons in interest not parties to a suit may be permitted to testify by the terms of an Act entitled as relating to parties in interest.[4] Authority to construct sewers and drains expressed in the title will cover provisions as to charge for the use of the same when completed.[5] An Act to provide for the erection of public buildings, as expressed in the title, may provide for the raising of taxes and the occupation of a certain square.[6] Provision for borrowing money is germane to authority to reconstruct county bridges.[7] A generally entitled supplement to a borough incorporation Act may authorize surveys of the town, plans, and the payment of an engineer for making them.[8] Designating the city controller as a county officer when city and county are co-extensive is germane to an Act entitled to carry into effect the constitutional provision as to the compensation of county officers.[9] All of the provisions of the Act of May 13th, 1887, known as the Brooks Law are germane to the subject as expressed in the title.[10] Costs are germane to the subject of levy, collection, and disbursement of taxes and water rents.[11] Designating when new offices shall be filled by election and when the terms of superseded officers shall cease, is germane to a title

relating to the classification of cities and designating the mode of changing the classification thereof.[12] A provision that all dogs in this Commonwealth shall hereafter be personal property and a subject of larceny, is germane to the title of an Act for the taxation of dogs and the protection of sheep, the purpose of the Act being the taxation of that which was not property at common law.[13] A provision for recovery by the wife, of damages to which the husband would otherwise be entitled for loss of services, on his filing a stipulation releasing his right, is germane to the title of an Act relative to actions brought by husband and wife, or by the wife alone for her separate property in case of desertion.[14] In this case, Chief Justice STERRETT said: "The first clause of the title indicates with sufficient clearness that one branch of the general subject on which it was proposed to legislate was in relation 'to actions by husband and wife,' the details of which legislation constitute the first section. The other branch of the subject is sufficiently indicated by the latter clause of the title, which relates to actions brought 'by the wife alone for her separate property in cases of desertion;' and the legislation on that constitutes the second section of the Act. Instead of containing more than one subject, the provisions of both sections are cognate, each, respectively, relating not to a separate and independent subject of legislation, but to branches of the same general subject, namely, remedial legislation in the interest and for the benefit of married women."

Provisions for the annexation of territory and the extension of city limits are germane to an Act entitled An Act providing for the incorporation and government of cities of a given class.[15] All of the provisions of the taxing Act of June 8th, 1891, P. L. 229, are germane to the title.[16] "The title of the Act of April 20th, 1874, relating to increase of indebtedness of municipalities is so manifestly significant of the subject of the bill that it would be a waste of time to discuss the question as to whether it included a power to in-

crease the indebtedness."[17] The purpose of the Act of May 23d, 1891, supplementary to the Corporation Act of 1874, and relating to beneficial associations, "is expressed fully and in very explicit terms in the title."[18] The Act of June 10th, 1893, P. L. 419, entitled "An Act to regulate the nomination and election of public officers, requiring certain expenses incident thereto to be paid by the several counties, and punishing certain offenses in regard to such elections," is insufficient in title in so far as it attempts to regulate the mode of voting on questions of the increase of municipal indebtedness.[19] This case may be considered as furnishing an illustration of a well-marked distinction. The subject of elections is a single subject, and an Act relating to elections with a title sufficiently general to indicate a purpose to legislate with regard to all elections would not be considered as violative of that branch of the constitutional provision in question which requires an Act to be confined to a single subject. On the other hand, when the subject of legislation as indicated in the title does not comprehend what might have been comprehended under a more general title but is confined to a subdivision of a general subject, then a provision which might be germane to the general subject is not germane to the subject as expressed in the title in restricted terms, as here, not elections generally, but the election of public officers.

[1]Blood v. Mercelliott, 53 Pa. St. 391.

[2]In re Church Street, 54 Pa. St. 353.

[3]Commonwealth v. Green, 58 Pa. St. 226.

[4]Yeager v. Weaver, 64 Pa. St. 425.

[5]Mauch Chunk v. McGee, 81 Pa. St. 433.

[6]Wheeler v. Rice, 83 Pa. St. 232; Lea v. Brumm, 83 Pa. St. 335.

[7]Myers v. Commonwealth, 110 Pa. St. 217.

[8]McKeesport v. Owens, 6 W. N. C. 492.

[9]Taggart v. Commonwealth, 102 Pa. St. 354.

[10]Commonwealth v. McCandless, 21 W. N. C. 162; 4 C. C. R. 119; 10 Cent. R. 758; Commonwealth v. Sellers, 130 Pa.

St. 32; and see Blood v. Mercelliott, 53 Pa. St. 391; citing Parkinson v. State, 14 Md. Rep. 185; contra, Commonwealth v. Doll, 6 C. C. R. 49; Commonwealth v. Fowler, 18 Phil. 513.

[11]Bradley v. Pittsburg, 130 Pa. St. 475.

[12]Commonwealth v. Wyman, 137 Pa. St. 108.

[13]Commonwealth v. Depuy, 148 Pa. St. 201.

[14]Kelly v. Mayberry Township, 154 Pa. St. 440.

[15]Harris's Appeal, 160 Pa. St. 494.

[16]Commonwealth v. Wilkes-Barre & Scranton Railway Company, 162 Pa. St. 614; Commonwealth v. Edgerton Coal Company, 164 Pa. St. 284.

[17]DEAN, J., Bruce v. Pittsburg, 166 Pa. St. 152.

[18]MITCHELL, J., in Commonwealth v. Keystone Benefit Association, 171 Pa. St. 465.

[19]Evans v. Willistown Township, 168 Pa. St. 578; Commonwealth v. Weir, 18 C. C. R. 425; and see generally Commonwealth v. Wilkes-Barre & Scranton Railway. 162 Pa. St. 614; Grubb's Appeal, 174 Pa. St. 187; Commonwealth v. Morningstar, 144 Pa. St. 103; Washington Borough v. McGeorge, 146 Pa. St. 248; City Sewage Utilization Company v. Davis, 8 Phila. 625; Smith v. Baker, 3 P. D. R. 626; Commonwealth v. Nihil, 4 P. D. R. 582: Bruce v. Pittsburg, 166 Pa. St. 152; Act of May 5th, 1876, P. L. 124, relating to taxation in cities of the second class.

The title of the Act of May 24th, 1887, P. L. 194, viz.: "An Act providing for the licensing of wholesales dealers in intoxicating liquors," properly includes the licensing of brewers and distillers. In a broad sense these are also wholesale dealers: Doberneck's License, 5 C. C. R. 454; s. c., 35 P. L. J. 476; and see Commonwealth v. Deibert; 12 C. C. R. 504; s. c., 2 D. R. 53; Eby's Appeal, 70 Pa. St. 311.

The Act of June 8th, 1893, P. L. 344, entitled "An Act relating to husband and wife, enlarging her capacity to acquire and dispose of property, to sue and be sued, and to make a last will, and enabling them to sue and to testify against each other in certain cases," has a sufficient title.

The objection made was that the title was misleading in so far as it abridged the rights of the wife in taking away her right in case of desertion to sue her husband for defamation of her character: Mink v. Mink, 16 C. C. R. 189.

The Act of April 17th, 1876, P L. 29, is entitled "An Act relating to appeals in cases of summary convictions." Doubted whether this title is sufficient to cover appeals from judgments for penalties: Commonwealth v. Swift, 17 C. C. R. 95. Held insufficient for that purpose: Mauch Chunk v. Betzler, 19 C. C. R. 27; s. c., 6 P. D. R. 330.

Railways upon rural highways are plainly comprehended within the title of the Act of May 14th, 1889, P. L. 211, entitled "An Act to provide for the incorporation and government of street railway companies in this Commonwealth:" Gettysburg Battlefield Association Case, 2 P. D. R. 649; Pennsylvania R. R. Company v. Montgomery County Passenger R. R. Company, 3 P. D. R. 58. The term "street railway companies" in said Act is used in the same sense as it is in the Constitution, Article XVII, Section 9, and previous statutes, to wit, to designate the character of the railway: one to carry passengers only, and to be located on highways, and not its location: Pennsylvania R. R. Company v. Montgomery County Passenger R. R. Company, Id.

The Act of April 1st, 1868, P. L. 583, entitled "An Act for the improvement of the borough of Norristown, in the county of Montgomery," has a sufficient title. The subject-matter relating to the laying of pavements and the construction of sewers is germane: Schall v. Norristown, 3 Luz. Leg. Reg. 77; 6 Leg. Gaz. 167.

The third section of the Act of June 10th, 1881, P. L. 86, entitled "A supplement to an Act, entitled 'An Act to provide revenue by taxation, approved the seventh day of June, one thousand eight hundred and seventy-nine,' " is embraced in the title. The section relates to the elective feature of the bank tax: Second National Bank v. Caldwell, 39 Leg. Int. 414; s. c., 13 Fed. Rep. 429.

In Barton v. Pittsburg, 4 Brewster, 373 (1870), an injunction was refused in the Court of Common Pleas of Allegheny County, where there was in question a general appropriation ordinance of the city of Pittsburg (so entitled), which contained provisions for the assessment of taxes to meet the appropriation. The latter provisions were held to

be germane. The charter of Pittsburg contained a provision similar to that of Article III, Section 6.

By the Act of May 23d, 1874, P. L. 230, relating to cities in Section 3, it is provided that no bill [ordinance] shall be passed containing more than one subject, which shall be clearly expressed in its title.

The Act of June 17th, 1887, P. L. 413, has a sufficient title: Lucas v. Ruff, 45 Leg. Int. 454, but it has been held invalid on other grounds: Titusville Iron Works v. Keystone Oil Company, 122 Pa. St. 627.

The Act of June 8th, 1881, P. L. 70, entitled "An Act to protect fruit, gardens, growing crops, grass, *et cetera*, and to punish trespass," and the Act of June 18th, 1895, P. L. 196, amendatory thereof, which recites the title of the former Act in its title, have sufficient titles. The words "*et cetera*" refer to things generally the same as those specified, and the titles are sufficiently comprehensive to include provisions relative to trees: Commonwealth v. Clark, 3 Super. Ct. 141. The title of the Act of May 24th, 1878, P. L. 134, entitled "A further supplement to an Act, entitled 'An Act relating to executions,' approved June sixteenth, one thousand eight hundred and thirty-six, providing that one justice of the peace, alderman, or magistrate, shall act where two are now required," has a sufficient title. All of its provisions are germane to the subject: Wilson v. Downing, 4 Super. Ct. 487. The Act of March 14th, 1873, P. L. 290, entitled "An Act to confer upon M. H. the rights, powers, and privileges of a son of B. H.," has a sufficient title to cover an exemption from the collateral inheritance tax: Commonwealth v. Henderson, 172 Pa. St. 135; 37 W. N. C. 344.

The title of the Act of May 1st, 1876, P. L. 90, entitled "An Act supplementary to an Act entitled 'An Act to provide for the incorporation and regulation of certain corporations,' approved April twenty-ninth, one thousand eight hundred and seventy-four, relative to the incorporation and powers of telegraph companies for the use of individuals, firms, and corporations, and for fire alarm, police, and messenger business," is sufficient to include the incorporation of telephone companies which are virtually telegraph companies: Telephone Company v. Keesey, 5 P. D. R. 366; s. c., York Telephone Company v. Keesey, 9 York, 153.

The Act of May 22d, 1883, P. L. 39, entitled "A supplement to an Act, entitled 'An Act regulating boroughs,' approved

the third day of April, Anno Domini one thousand eight hundred and fifty-one, and empowering the corporate authorities of boroughs to lay foot-walks along turnpike roads, and assess the cost of paving, curbing, and guttering the same on the owners of the adjoining lands," and the Act of May 16th, 1891, P. L. 75, entitled "An Act in relation to the laying out, opening, widening, straightening, extending, or vacating streets and alleys, and the construction of bridges in the several municipalities of this Commonwealth, the grading, paving, macadamizing, or otherwise improving streets and alleys, providing for ascertaining the damages to private property resulting therefrom, the assessment of the damages, costs, and expenses thereof upon the property benefited, and the construction of sewers and payment of the damages, costs, and expenses thereof, including damages to private property resulting therefrom," have sufficient titles. Drains are component parts of highways and streets: Strohl v. Ephrata, 13 Lanc. L. R. 1.

13. Two Subjects.

In Hatfield v. Commonwealth,[1] the Act of April 12th, 1867, P L. 1178, entitled "An Act to prohibit the issuing of licenses within two miles of the Normal School at Mansfield, Tioga County, Penna," was in question. The defendant was indicted under the second section of the Act, which made it a misdemeanor to sell liquors within the limits aforesaid. The defendant sold domestic wines by the bottle, but not for drinking on his premises, which he might lawfully have done under the eighth section of the Act of April 20th, 1858, P. L. 365. It was held that the Act contained two distinct subjects, one of which was referred to in the title, and that a conviction could not be sustained. The title was also held to be misleading.

[1]Hatfield v. Commonwealth, 120 Pa. St. 395; and see Commonwealth v. Frantz, 135 Pa. St. 389.

The Act of May 21st, 1879, P. L. 72, entitled "An Act repealing Section 7 of an Act entitled 'An Act to carry into effect Section 5 of Article XIV, of the Constitution, relative

to the salaries of county officers and the payment of fees received by them into the State or county treasury in counties containing over 150,000 inhabitants, approved the thirty-first day of March, Anno Domini one thousand eight hundred and seventy-six,' and also repealing the supplement to said Act, approved the 23d day of March, 1877, and conferring upon Councils of cities of the first class the power of fixing the number and salaries of certain employés," contains "three distinct subjects in one title: First, Repeal of Section 7 of the Act of 1876; Second, Repeal of the supplement of 1877; and third, giving Councils of cities of the first class power to fix the number and salaries of certain employés . . the title is misleading and fails to give notice of the legislative purpose."—COLLIER, J., Commonwealth v. Mercer, 9 C. C. R. 461.

The Act of Mch. 18th, 1869, P. L. 393, and its supplement of April 10th, 1869, P. L. 828, contain more than one subject, in that a new mode of assessing damages is provided for. The former Act was entitled "An Act providing for the appointment of superintendents and the election of supervisors of highways in the Twenty-second Ward of the city of Philadelphia," the second section of which provided a mode for the assessment of damages different from the general law. The supplement was apparently intended to cure a supposed defect in the title of the original Act in failing to refer to the matter of damages, and it was entitled "A supplement to an Act providing for the appointment of superintendents and the election of supervisors of highways in the Twenty-second Ward of the city of Philadelphia, approved March eighteenth, Anno Domini one thousand eight hundred and sixty-nine, giving certain additional powers and imposing certain duties upon said superintendents, and regulating the manner of assessing damages for opening streets in said ward:" In re Hancock Street, 1 W. N. C. 112, C. P. Phila.

The Act of January 2d, 1871, P. L. 1556, entitled "A further supplement to an Act incorporating the city of Harrisburg, in the county of Dauphin, passed April 9th, 1869," has an insufficient title. PEARSON, J., points out that the Act contains five different subjects relating: First, to the record of a plot; Second, a new mode of assessing damages; Third, authorizing the opening of Front Street, and providing a new mode of assessing damages; Fourth, vesting title in fee in the city to what was formerly covered by an easement;

and Fifth, a provision that the county of Dauphin shall build and keep in repair a certain bridge in the city: In re State Street, 2 Leg. Chron. 1 (1873).

14. Original Acts and General Supplements and Amendments.

Where an Act is entitled generally a supplement to an Act referred to by its title, or otherwise sufficiently identified, the title of the former is sufficient.[1] A railroad company was incorporated by an Act, entitled "An Act to incorporate the State Line & Juniata Railroad," afterwards an Act was passed entitled "A supplement to an Act entitled 'An Act to incorporate the State Line & Juniata Railroad.' " This supplement authorized the company to locate their road and branches without reference to the terminal and intermediate points mentioned in the original Act, and to extend their road as the directors might judge would enable them to make proper connections with other railroads, and to erect a telegraph line. Afterwards an Act was passed, entitled "A further supplement to an Act entitled 'An Act to incorporate the State Line & Juniata Railroad,' " which gave the company power to build such branches, by such routes, and to such points as the directors might deem expedient, to commence the main line and branches at any points the directors might determine, cross other roads at grade, build, and maintain branches, etc. The validity of the supplementary legislation being in question, Mr. Justice Paxson said: "In Allegheny Home's Appeal it was held that 'if the title fairly gives notice of the subject of the Act so as to lead to inquiry into the body of the bill, it is all that is necessary,' applying this rule to the case before us we do not regard the Acts referred to as offending against the Constitution, because their subject is not clearly set forth in their titles. One of said Acts is entitled 'A supplement,' and the other 'A further supplement to an Act entitled An Act to incorporate the State Line & Juniata Railroad.' An examination of the said

supplement discloses the fact that all the legislation contained therein relates to the State Line & Juniata Railroad. The true rule is that where the legislation in the supplement is germane to the title of the original bill, the object of such supplement is sufficiently expressed in the title. . . "[2]

In re Pottstown Borough,[3] there was in question the general borough law of 1851, entitled "An Act for the regulation of boroughs," the Act of June 11th, 1879, entitled "A supplement to an Act for the regulation of boroughs," and the Act of May 17th, 1883, entitled "An Act to amend (the first section of the last mentioned Act) so as to include all incorporated boroughs." This legislation was sustained on the ground that all the provisions of the supplement and amendatory Act were cognate to the subject of the original title. Where a general supplement extended the line of the railroad and conferred powers under the general railroad law of 1849, it was held that the term "railway" in the corporate style of the company did not necessarily import a street passenger railway, and that the right to use steam as a motive power and to carry freight as well as passengers, together with the other provisions of the Act were well covered by the title.[4] An apparently erroneous recital of the title of an original Act in the title of a supplement caused by misplaced quotation marks will not vitiate the latter when the sense is clear.[5] Two street railway companies merged under a new name, to wit, Ridge Avenue Passenger Railway Company, afterwards an Act, entitled "An Act relating to the Ridge Avenue Passenger Railway Company," was passed, which contained a provision repealing "all the provisions in the charters of the two companies so consolidated as above recited, not included in this Act." It will be noticed that neither of the consolidated companies was of the corporate name mentioned in the title of the Act. It omitted a provision in the charter of one of the companies charging it with the expense of keeping in repair the streets and avenues traversed by it. The title was held insufficient for this purpose.[6]

And in a subsequent case, a provision reducing the rate of taxation of dividends for city purposes was held not to be covered.[7] In the latter case, the general rule as to supplementary Acts was stated as follows: "When an Act of Assembly is a supplement to a former Act, if the subject of the original Act is sufficiently expressed in its title and the provisions of the supplement are germane to the subject of the original Act, the general rule is that the subject of the supplement is covered by a title which contains a specific reference to the original, by its title, giving the date of its approval, and declaring it to be a supplement thereto." It will be noticed that the title involved in these cases was not in form supplementary, and that the principle upon which the title was held insufficient was one equally applicable whether the Act were original or supplementary. The Act of May 18th, 1887, P. L. 118, was entitled "A supplement to an Act relating to the lien of mechanics and others upon buildings." This title was held to be sufficient. It was said: "While said Act may be objectionable in form, it is, nevertheless, in substantial compliance with Section 6 of Article III of the Constitution. It not only quotes the title of the Act of June 16th, 1836, but it re-enacts and publishes at length so much thereof as by its supplement of May 1st, 1861, is extended and amended."[8] The Act of June 2d, 1887, P L. 310, was entitled "An Act supplementary to an Act approved April 29th, 1874, entitled 'An Act to provide for the incorporation and regulation of certain corporations, amending the thirty-fourth section thereof, extending its provisions to fuel companies, providing for their capital stock, and regulation, and giving them power of eminent domain.' " The title was held to be sufficient, and the judgment of the court below was affirmed for the reasons given in the opinion of his Honor, Judge RICE, who said: "After careful examination of this title we are unconvinced that it is fairly subject to the objection made. The title first declares that the Act is a supplement to the general Act providing for the incorporation and

regulation of certain corporations, and then proceeds to indicate the particulars in which it supplements that Act; (a) by amending the thirty-fourth section thereof; (b), by extending its provisions to fuel companies; (c) by providing for their capital stock and regulation; (d) by giving them the power of eminent domain. The words 'amending the thirty-fourth section thereof,' and 'extending its provisions to fuel companies,' are different branches of the same general subject, and we do not think the careful reader would conclude, without examining further, that the latter clause was merely explanatory of the former. Amending an Act or section of an Act is one thing, extending its provisions is another. The provisions of an Act may be extended in the form of an amendment, but if that were the sole purpose of which the title was to give notice, one would naturally suppose that the two clauses would have been connected by the word 'by,' or the words 'so as to extend,' or that the words 'extending the provisions of the thirty-fourth section to fuel companies' would have been used without inserting the first clause at all. As it was written, we think the title gives notice of an amendment of the thirty-fourth section beyond the mere extension of its provisions to fuel companies, which was sufficient to lead legislators and others interested to examine into the provisions of the Act, and this, according to the great weight of authority, is the test.

"Fuel companies were expressly referred to, not for the purpose of diverting attention and misleading, but, as it seems to us, out of abundant caution, because they had not been mentioned in the original Act."[9] This title, it will be noticed, was in its terms both general and specific.

[1]In re Church Street, 54 Pa. St. 353; City Sewage Utilization Company v. Davis, 8 Phila. 625.

[2]State Line & Juniata R. R. Company's Appeal, 77 Pa. St. 429; s. c., Lyon v. State Line & Juniata R. R. Company, 1 W. N. C. 225, 77 Pa. St. 429; see also Horstman v. Kaufman, 97 Pa. St. 147; s. c., 8 W. N. C. 73; Leowi v. Haedich, 8

W. N. C. 70; Beckert v. Allegheny, 85 Pa. St. 191; McKeesport v. Owens, 6 W. N. C. 492; Craig v. First Presbyterian Church, 88 Pa. St. 42; Commonwealth v. Edgerton Coal Company, 164 Pa. St. 284; Ruth's Appeal, 10 W. N. C. 498, 8 Lanc. L. R. 264, 1 Lack. Leg. Rec. 311.

[3]In re Pottstown Borough, 117 Pa. St. 538, 1 Montgomery County, 161; 1 Montgomery County, 189.

[4]Millvale v. Evergreen Railway Company, 131 Pa. St. 1.

[5]Commonwealth v. Taylor, 159 Pa. St. 451.

[6]Ridge Avenue Passenger Railway Company v. Philadelphia, 124 Pa. St. 219; 23 W. N. C. 324.

[7]Philadelphia v. Ridge Avenue Passenger Railway Company, 142 Pa. St. 484; 6 C. C. R. 283.

[8]Purvis v. Ross, 158 Pa. St. 20; 12 C. C. R. 193. Affirmed in Smyers v. Beam, 158 Pa. St. 57.

[9]Luzerne Water Company v. Toby Creek Water Company, 148 Pa. St. 568; s. c. below, 6 Kulp, 237; and see Hoffa's Appeal, 1 Super. Ct. 357.

The Act of April 12th, 1875, P. L. 40, is entitled "An Act to permit the voters of this Commonwealth to vote every three years on the question of granting licenses to sell intoxicating liquors and to restrain and regulate the sale of the same." In sustaining this title the court below said: "The Act has but one subject or purpose, the regulation of liquor traffic; to it every provision is strictly germane. The repeal of the Act of 1872, the classification of retail licenses, the general enactments applicable to wholesalers and retailers, the special ones to bottlers, the penal provisions, and the saving of local laws, are but incidents to the main purpose of the statute, which would have been adequately expressed by a simple declaration of intent to regulate the sale of intoxicating liquors."—ENDLICH, J., Commonwealth v. Deibert, 12 C. C. R. 504; s. c., 2 P. D. R. 446; 2 P. D. R. 53.

The title to the Act of May 24th, 1871, P. L. 1096, entitled "An Act entitled 'A supplement to an Act erecting the village of Mount Joy and Richland, and their vicinity, in the county of Lancaster, into a borough, to be called the borough of Mount Joy,' passed the tenth day of February, one thousand eight hundred and fifty-one," is sufficient

within the rule as to original and supplemental legislation. In this case the supplement put a charge upon the turnpike: Mount Joy v. Lancaster Turnpike, 13 Lanc. L. R. 180. The Act of June 1st, 1887, P. L. 285, is entitled "A further supplement to an Act, approved the eleventh day of June, Anno Domini one thousand eight hundred and seventy-nine, entitled 'A supplement to an Act for the regulation of boroughs,' approved the third day of April, one thousand eight hundred and seventy-one, providing for the adjustment of indebtedness and government of the boroughs, townships, and school districts affected by changes of limits of any borough in the Commonwealth." There is no Act corresponding to the Act of April 3d, 1871, referred to in this title; the evident intention was to amend the twenty-third and twenty-fourth sections of the General Borough Law of April 3d, 1851, P. L. 320. The title was held sufficient: Darby & Collingdale, 19 C. C. R. 315.

15. Original Acts and Specific Supplements and Amendments.

Where the title of an amendatory or supplementary Act is specific the maxim *expressio unius est exclusio alterius* applies as well as it does to the title of an original enactment.[1]

[1]Union Passenger Railway Company's Appeal, 81* Pa. St. 91; 4 Leg. Gaz. 381; 29 Leg. Int. 380; 9 Phila. 495; Philadelphia v. Spring Garden Farmers' Market Company, 161 Pa. St. 522; and see Sener v. Ephrata, 176 Pa. St. 80; Rogers v. Glendower Iron Works, 17 W. N. C. 444; Evans's Appeal, 152 Pa. St. 401; Davey v. Ruffell, 162 Pa. St. 443.

In Philadelphia v. Pepper, 2 C. C. R. 287, an objection to the title of the Act of June 22d, 1883, P. L. 161, which was a supplementary Act, was overruled. An objection to the Act on other constitutional grounds prevailed.

The Act of June 10th, 1881, P. L. 79, entitled "A supplement to an Act to amend and consolidate the several Acts relating to game and game fish, approved the third day of June, one thousand eight hundred and seventy-eight, changing the time for hunting and killing deer, squirrels, rabbits, wild tur-

keys, pheasants, and prairie chickens," is insufficient in title so far as the provisions of the said supplement relate to fish. The specification in the title of the supplementary Act does not include fish, and the Act is valid only in so far as it relates to the certain animals enumerated. The maxim *expressio unius*, &c., is applied in the opinion of the court: Commonwealth v. Bender, 7 C. C. R. 620; 8 W. N. C. 73.

The Act of June 23d, 1885, P. L. 141, was entitled "An Act for the destruction of wolves, wildcats, foxes, minks, hawks, weasels, and owls, in this Commonwealth." The Act of May 13th, 1887, P. L. 116, was entitled "An Act to repeal an Act, entitled 'An Act for the destruction of wolves, wildcats, foxes, minks, hawks, weasels, and owls, approved the twenty-third day of June, one thousand eight hundred and eighty-five,' so far as it relates to foxes, minks, hawks, weasels, and owls." The Act of April 25th, 1889, P. L. 54, was entitled "An Act to amend the provisions of the first section of an Act approved May 13th, 1887, entitled 'An Act for the destruction of wolves and wildcats.'" "The title to the Act as adopted not only makes it amend an Act not on the statute books, but it contains nothing to indicate that the bill has anything to do with foxes and minks, the real subject of the Act:" BARKER, J., Sanders v. Cambria County, 16 C. C. R. 94; S. C., 4 P. D. R. 241.

16. REPEAL AND RE-ENACTMENT.

The Act of May 13th, 1887, P. L. 108, is entitled "An Act to regulate and restrain the sale of vinous and spirituous, malt or brewed liquors, or any admixture thereof." This Act in Section 19 provides that all local laws fixing a license rate or fee less than is provided for in this Act are repealed. It was objected that this title was insufficient to give notice of the repeal of local liquor laws. The contrary was held by the court below,[1] whose judgment was affirmed by the Supreme Court in a *per curiam* opinion.[2] The Act of April 7th, 1877, P. L. 83, was entitled "A further supplement to an Act to incorporate the city of Scranton," and provided for the repeal of a clause of a special Act relating to the collection of taxes in said city. The title was held insufficient to cover such repeal, in an opinion of the court below on a motion for a preliminary

injunction, and the order was affirmed on appeal in a *per curiam* opinion. Other points were involved in the case.[3] The Act of June 13th, 1883, P. L. 116, entitled "An Act to amend the first section of an Act, entitled 'An Act for the better protection of the wages of mechanics, miners, laborers, and others, approved the 9th day of April, 1872,' amending said Act so that the wages of servant girls. washerwomen, clerks, and others shall be preferred, and first paid out of the proceeds of the sale of the property of insolvent debtors owing wages to such servants or employés," enlarged the class of wage claimants and re-enacted a provision of the Act of 1872, requiring the filing of the claim in the prothonotary's office, which had been repealed by an Act of 1874. It was held that the title of the Act of 1883 gave no notice of an intention to repeal the repealing Act of 1874, nor to impose any restrictions upon wage claimants, and that therefore such provisions were void, and as to them the title was misleading.[4] The Act of May 24th, 1893, P. L. 124, entitled "An Act to abolish the commissioners of public buildings, and to place all public buildings heretofore under the control of such commissioners under the control of the department of public works in cities of the first class," which by such title and its first section purported the abolition of the said commissioners—*i. e.*, the vacation of their offices, and the transfer of the control to the department of public works, thereby attempting to vest the powers of the commissioners in such department, and which in its second section attempted to repeal the Act of August 5th, 1870, whereby the commission was created and its powers defined, was held invalid, because the latter purpose was not expressed in the title, which purported the contrary, and because the object expressed in the title was contrary to other provisions of the Constitution.[5] The title of the Act of June 3d, 1887, P L. 337, purported it to be a supplement to an Act of June 13th, 1883, which in its title purported to be an amendment to the Act of April 9th, 1872. The title of the Act of 1887

concluded "providing for the manner of collecting claims when liens have been filed against the real estate of employers." Section 1 of said Act of 1887 recited the provision of the Act of 1882, relating to the filing of liens in the prothonotary's office, which had been repealed by an Act of 1874, and re-enacted the same with amendments. The title was held sufficient, and the Act was held to repeal, by implication, the Act of 1874.[6] In Commonwealth v. Taylor,[7] there was in question an original enactment of 1874, a supplement of 1878 re-enacting and amending certain provisions of the Act of 1874, and thus repealing them, save in so far as re-enacted; a supplement of 1883 to the Act of 1874 not noticing the modifications effected by the Act of 1878, but re-enacting the original provisions; and a later Act of 1889 again quoting the Act of 1874 without reference to the provisions of the Acts of 1878 and 1883. It was held that the legislation might all stand, the later provisions being given effect in order, and that the title of the Act of 1878, P. L. 51, entitled "A supplement to an Act entitled 'An Act to prescribe the manner in which the courts may divide boroughs into wards,' approved the 14th day of May, 1874," was sufficient to give notice of repeal of inconsistent provisions of the Act of 1874, which repeal was expressed in general terms.

[1]Commonwealth v. McCandless, 4 C. C. R. 119.

[2]Commonwealth v. McCandless, 21 W. N. C. 162; 10 Cent. Rep. 758.

[3]Ruth's Appeal, 10 W. N. C. 498; 8 Lanc. L. R. 264; 1 Lack. Leg. Rec. 311.

[4]Evans's Appeal, 152 Pa. St. 401.

[5]Perkins v. Philadelphia, 156 Pa. St. 554; 156 Pa. St. 539.

[6]Evans's Appeal, 152 Pa. St. 401; and see Rogers v. Glendower Iron Works, 17 W. N. C. 444.

[7]Commonwealth v. Taylor, 159 Pa. St. 451; and see Ridge Avenue Passenger Railway Company v. Philadelphia, 124 Pa. St. 219; 23 W. N. C. 324; Philadelphia v. Ridge Avenue Passenger Railway Company, 142 Pa. St. 484; 6 C. C. R. 283;

Union Passenger Railway Company's Appeal, 81* Pa. St. 91; 4 Leg. Gaz. 381; 29 Leg. Int. 380; 9 Phil. 495; Philadelphia v. Spring Garden Farmers' Market, 161 Pa. St. 522; Bittinger's Estate, 129 Pa. St. 338; Del Busto's Estate, 23 W. N. C. 111; South Bethlehem v. Hemingway, 16 C. C. R. 103; Commonwealth v. Morgan, 178 Pa. St. 198; Commonwealth v. Williams, 178 Pa. St. 211; Commonwealth v. Rynkiewicz, 178 Pa. St. 213; Commonwealth v. Shoemaker, 178 Pa. St. 214; Commonwealth v. Toomey, 178 Pa. St. 215; Commonwealth v. Van Loon, 4 Kulp, 338; Commonwealth v. Dolphin, 2 C. P. Rep. 85.

The Act of May 21st, 1879, P. L. 72, entitled "An Act repealing Section 7 of an Act, entitled 'An Act to carry into effect Section 5 of Article XIV, of the Constitution, relative to the salaries of county officers and the payment of fees received by them into the State or county treasury, in counties containing over 150,000 inhabitants, approved the thirty-first day of March, Anno Domini one thousand eight hundred and seventy-six,' and also repealing the supplement to said Act, approved the 23d day of March, 1877, and conferring upon councils and cities of the first class the power of fixing the number and salaries of certain employés," contains "three distinct subjects in one title: First, repeal of Section 7 of the Act of 1876; Second, repeal of the supplement of 1877; and third, giving councils of cities of the first class power to fix the number and salaries of certain employés the title is misleading and fails to give notice of the legislative purpose:" COLLIER, J., Commonwealth v. Mercer, 9 C. C. R. 461.

The Act of March 16th, 1868, P L. 352, entitled "An Act relating to boroughs in the county of Chester," repealed certain provisions of the General Borough Law of 1851, and its supplement of 1856. The title was held sufficient to cover such repealing provisions: Nutt's Avenue, 2 Chester Co. 49.

The title of the Act of June 26th, 1895, P. L. 343, entitled "An Act relative to bonds, undertakings, recognizances, guarantees, and other obligations required or permitted to be made, given, tendered, or filed with surety or sureties, and to the acceptance as surety or guarantor thereupon of companies qualified to act as such," is insufficient to cover pro-

visions operating to repeal prior Acts relating to sureties: American Banking & Trust Company's Petition, O. C. Phila. 37 W. N. C. 297.

17. Provisos, Exceptions, and Exemptions.

A proviso inconsistent with the title is inoperative.[1]

[1]Sewickley Borough v. Sholes, 118 Pa. St. 165.

The Act of April 15th, 1891, P. L. 17, was entitled, "An Act to provide for an appeal by county commissioners, cities, or other municipalities, and all persons interested in the damages awarded for laying out, widening, grading, opening, or changing the lines or grades of any public street, road, or alley in this Commonwealth, from the decree of the Court of Quarter Sessions confirming the report of the viewers assessing such damages." To the first section was added: "*Provided*, The appeal be taken within thirty days after the final confirmation of the report of said jury; provided, that notice be given to the commissioners of the proper county or their clerk of the time and place of holding such view." The latter proviso was held to be void, because not expressed in the title. "In reading the title any legislator, commissioner, or other person interested, could not know or surmise that anything in the bill referred to any proceeding prior to the time of the appeal:" Willard, J., Road in Otto Township, 2 Super. Ct. 20. Affirmed, 181 Pa. St. 390; 38 W. N. C. 328.

The Act of May 7th, 1891, P. L. 44, was entitled "An Act amending an Act, entitled 'An Act to enable laborers to secure and collect their pay for work done in and about the stocking of saw logs,' approved June twelfth, one thousand eight hundred and seventy-nine, and further providing that the same shall apply to the hewing, making, and hauling of square timber, and the peeling, skidding, and hauling of bark." A proviso to the Act is that "When work as aforesaid shall have been done for a contractor or contractors, and not for the owner or owners of said saw logs, square timber, or bark, all moneys due as aforesaid shall be preferred and paid to laborers as aforesaid, and any payment or payments so made shall be a good charge against the contractor or contractors in favor of the owner or owners in settlement of their account." It was claimed that this proviso sought to in-

troduce a new subject not contained in the Act of 1879, or suggested by its title. "An examination of the original Act, however, shows that the proviso is practically an amendment of the fourth section of the Act, and extends the general provisions of the Act as to preference and payment to laborers who work for a contractor or contractors, as well as those who work for the owner or owners. It introduces no new subject into the Act, and the title clearly and fully covers all that is contained in it:" BEAVER, J., Hoffa's Appeal, 1 Super. Ct. 357.

The Act of July 2d, 1895, P L. 428, entitled "An Act to regulate and license public lodging houses in the different cities of this Commonwealth," excepts from its provisions wayfarers' lodges operated under the Act of June 13th, 1883, P L. 101. This Act was sustained in Commonwealth v. Muir, 1 Super. Ct. 578. Affirmed, 180 Pa. St. 47.

By the terms of Section 20 of the Act of June 30th, 1885, P. L. 193, entitled "A further supplement to an Act, entitled 'An Act to provide revenue by taxation,' approved the seventh day of June, one thousand eight hundred and seventy-nine," taxes laid upon manufacturing corporations were abolished, except as to corporations engaged in the manufacture of malt, spirituous, or vinous liquors, or in the manufacture of gas. The title of this Act was held to be sufficient notwithstanding: Sanderson v. Commissioners, 1 C. C. R. 342; Hawes Manufacturing Company's Appeal, 1 Monaghan, 353.

The Act of April 9th, 1870, P. L. 1068, was entitled "An Act to punish the sale and traffic in mineral water bottles and other bottles, and for the protection of bottlers and venders of mineral waters and other beverages in this Commonwealth." In the second section of the Act there was a proviso that the Act should "apply only to the city of Philadelphia," the title was held to be insufficient and misleading, in a case arising in Philadelphia, by reason of the difference between the title and the proviso affecting the territorial scope of the Act: Commonwealth v. Farley, 6 C. C. R. 433; 46 Leg. Int. 108.

18. APPROPRIATION BILLS.

Related to Article III, Section 3, is Article III, Section 15, which provides: "The general appropriation bill shall

embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the Commonwealth, interest on the public debt and for the public schools; all other appropriations shall be made by separate bills, each embracing but one subject."

The general appropriation Act of 1893, P. L. 308, contained the following item: "For the payment of the salary of a clerk in the offices of the prothonotaries of the Supreme Court for the Eastern and Western Districts, respectively, two years, the sum of four thousand eight hundred dollars, or so much thereof as may be necessary."

Upon a mandamus against the Auditor-General the question stated for the judgment of the court was whether or not, under the terms of the said Act, the appropriation therein made for a clerk in the office of the prothonotaries of the Supreme Court for the Eastern and Western Districts, respectively, may be lawfully paid by the auditing and fiscal officers of the Commonwealth without further legislation formally establishing such an office. By the judgment of the Supreme Court a mandamus was awarded.[1] Mr. Justice MITCHELL, in delivering the opinion of the court, said: "It is uncontroverted, therefore, that the Legislature could do the substantial thing, and the only question is whether it could do it in the present form. In general it will not be disputed that the Legislature is the exclusive judge of the form in which its enactment shall be put, and its mandate in that respect cannot be questioned unless it transgresses a plain prohibition in the Constitution. The only provision invoked here is Section 15, of Article III, 'the general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the Commonwealth,' etc. The history and purpose of that section are well known. It was aimed at the objectionable practice of putting a measure of doubtful strength on its own merits, into the general appropriation bill, in legislative phrase tacking it on as a rider, in order to

compel members to vote for it or bring the wheels of government to a stop. The same constitutional intent is embodied in Section 16 of Article IV, giving the Governor power to disapprove separate items of appropriation bills. It is the practice of thus forcing the passage of extraneous matters not germane to the purpose of the bill itself that was intended to be abolished. As to general legislation the same object among others was secured by the provision of Section 3 of Article III, that 'no bill, except general appropriation bills, shall be passed, containing more than one subject.' General appropriation bills from their nature usually cover a number of items, not all relating strictly to one subject. They were, therefore, excepted from the requirement of Section 3, and this exception necessitated the special Section 15 relating to them. The object of both is the same. Is the present measure within the mischief that was intended to be prohibited? The instances cited by the appellant covering a period of twenty years since the adoption of the Constitution show the legislative understanding on the subject, and we may fairly infer that of the executive also, as the various Acts cited were approved by the Governors. Such understanding and practice are not, of course, binding on the judiciary, who are the ultimate authority in the interpretation of the Constitution; but, as the view of the two co-ordinate branches of the government, they are entitled to respectful consideration and persuasive force if the matter be at all in doubt.

"It cannot be assumed that the Constitution meant to compel the Legislature even to supervise all the details of the government. That is properly the function of the executive and judicial branches. What work there is to be done, and what clerical force there is to do it, is a question of detail as to which much must necessarily be left to the head of each department. It is clearly the executive province to keep a general control over the expenditure of the public funds, but this it does so long as no money is paid out without a previous ap-

propriation for that purpose. While it thus holds the purse strings it controls the whole subject as completely as its proper functions under the Constitution demand. In passing general appropriation bills the Constitution limits them to the 'ordinary expenses of the executive, legislative, and judicial departments,' and some other enumerated matters, and every valid appropriation in this form must appear to be reasonably with the description of 'ordinary expenses,' but it would be sticking in the bark to require a separate bill to be passed every time an additional clerk was to be appointed in a public department. In regard to the particular item under consideration, it appears to be intended to pay for part of the regular and ordinary work of the offices named, and therefore to be for their ordinary expenses. It is a recognition by the Legislature that the prothonotary cannot do the whole work of his office *proprio manu*, and an authority to him to have a portion of it done at the public cost. By such recognition and authority it becomes a part of the ordinary expenses of his office, and that his office is a part of the judicial department of the Commonwealth does not admit of question. As already said, it is conceded on all hands that the Legislature had ample power to do the substantial thing that it did, to wit, to authorize the appointment of a clerk in the office of the prothonotary and provide for his salary out of the public treasury, and as the purpose of such appointment and the duties of the appointee were to secure the performance of the regular and ordinary work of the office, we are of opinion that the Legislature might constitutionally do it in the form they did, by an item in the general appropriation bill for the judicial department."

[1]Commonwealth v. Gregg, 161 Pa. St. 582.

II.

ENACTMENT BY REFERENCE TO FORMER LEGISLATION.

Art. III, Sec. 6. No law shall be revived, amended, or the provisions thereof extended, or conferred, by a reference to its title only; but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length. *Constitution.*

CONTENTS.

1. The object of the provision.
2. The provision is mandatory.
3. It is not necessary to recite at length the pre-existing statute, or portions thereof, the provisions of which are revived, amended, extended, or conferred.
4. Express amendments by way of addition must recite, in full, the provisions to which the additions are made.
5. The provision does not apply to independent enactments.
6. The provision does not apply to supplements.
7. The provision does not apply to repeals.
8. The provision does not apply in cases of revival of a pre-existing statute by reason of the repeal of a repealing Act.
9. Independent enactments referring to pre-existing law.
10. The provision cannot be evaded by an expository statute.
11. Re-enactment of former statute by way of amendment, without regarding intervening repeal or amendment.
12. Making a local statute general where the local statute, enacted prior to 1874, extended the provisions of a pre-existing statute.

ENACTMENT BY REFERENCE

TO

FORMER LEGISLATION.

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1. The Object of the Provision.

"The constitutional provision has reference to express amendments only. Its object, like that of Section 2 [3] of the same Article, requiring each Act to have its subject clearly expressed in its title, was to secure to the legislators themselves and others interested, direct notice in immediate connection with proposed legislation of its object and purpose."[1] "The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making comparison, failed to become apprised of the changes made in the laws."[2] Enactments should be self-explanatory and self-sustaining.[3]

[1]Per Mr. Justice Mitchell. Stuart's Appeal, 163 Pa. St. 210.

[2]Cooley, J., in People v. Mahaney, 13 Michigan, 197. Quoted by White, J., the writer of Article III, Section 6; Purvis v. Ross, 12 C. C. R. 193.

[3]Barrett's Appeal, 116 Pa. St. 486; Titusville Iron Works v. Keystone Oil Company, 122 Pa. St. 627.

It is said in the syllabus, Norristown v. Citizens' Passenger Railway Company, 148 Pa. St. 87, that the provision in question applies to borough ordinances for the reason that borough councils cannot do what the Legislature is forbidden to do. Such a dictum is found in the opinion of the court

below, together with other reasons, probably sufficient to sustain the judgment, which was affirmed in a *per curiam* opinion. There is an obvious distinction between limitations upon legislative forms and limitations upon legislative power. Nor does it follow that limitations such as these upon the General Assembly are also limitations upon the legislative authorities of municipalities. See Baldwin v. Philadelphia, 99 Pa. St. 164; Klingler v. Bickel, 117 Pa. St. 326; McCormick v. Fayette County, 150 Pa. St. 190.

2. The Provision is Mandatory.

That the provision is mandatory is shown by all of the decided cases in which a statute has been declared void for failure to comply with the constitutional requirement.

3. It is not Necessary to Recite at Length the Pre-existing Statute, or Portions Thereof, the Provisions of Which are Revived, Amended, Extended, or Conferred.

The Act of June 8th, 1881, P. L. 60, was entitled an Act declaratory of the meaning of and amending the thirteenth section of another Act, the title of which was recited, approved May 23d, 1874. The Act of 1881, which contained but one section, declared that the thirteenth section of the Act, the title of which was again recited, is hereby amended, and it is hereby declared that the true intent and meaning of the same is and shall be as follows: Amended Section 13 was then set forth without more. The Act did not recite Section 13 of the pre-existing Act of 1874. Said Mr. Justice Paxson, referring to Section 13 of the Act of 1874, P. L. 231: "As this section, however, is expressly repealed by the Act of June 8th, 1881, P. L. 68 [60] we need not further refer to it. The said Act of June 8th, 1881, repeals, though in the most bungling manner, the thirteenth section of the Act of 1874. The title as well as the body of said Act professes to declare the meaning of the said section of the Act of 1874,

and if this were all, the Act of 1881 would conflict with Section 6 of Article III of the Constitution, which declares that 'no law shall be revived, amended, or the provisions thereof extended or conferred by a reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length.' It is for the courts to declare the 'meaning' of an Act of the Legislature. But the Act of 1881 goes further and amends the thirteenth section of the Act of 1874, and we may reject as surplusage, or harmless verbiage, so much of it as professes to attach a meaning to the Act of 1874."[1] Reference to the Act of 1881, P. L. 60, will show that it contains no words of repeal. The express repeal referred to by the learned justice is that which follows as the consequence of the enactment of an amended and superseding section.

The Act of June 10th, 1881, P. L. 86, entitled "A supplement to an Act, entitled 'An Act to provide revenue by taxation, approved the seventh day of June, one thousand eight hundred and seventy-nine,' " "does not violate the provision in question; the recital at length of the provision to be amended is unnecessary; it is sufficient if the law in its amended form is re-enacted and published at length."[2]

[1]East Grant Street, 121 Pa. St. 596.

[2]Per ACHESON, J., Second National Bank of Titusville v. Caldwell, 39 Leg. Int. 414; s. c., 13 Fed. Rep. 429.

S. P. Commonwealth v. Fleckner, 17 C. C. R. 671, 8 Kulp, 225, a case arising on the Act of June 12th, 1878, P. L. 196, supplementary to the Act of March 31st, 1860, by amending the 116th, 117th, 118th, and 119th sections. The sections were not recited at length, but the Act of 1878 in separate sections referring to them respectively declared that they were thereby amended so as to read as follows:—thereupon setting forth each section as amended. And see Loftus v. Farmers' and Mechanics' National Bank, 133 Pa. St. 97; opinion of court below, page 101; s. c., 25 W. N. C. 459; 46 L. I. 46; Act of March 19th, 1875, P. L. 24; Wilson v. Downing, 4 Super. Ct. 487; Act of May 24th, 1878, P. L. 134.

4. EXPRESS AMENDMENTS BY WAY OF ADDITION MUST RECITE IN FULL THE PROVISION TO WHICH THE ADDITION IS MADE.

The Act of May 1st, 1876, P. L. 93, provided that the second section of the Act of April 16th, 1875, P. L. 55, which was recited by its title, "be amended by adding thereto as follows:" Here followed the amendment which included only the matter to be added to the section without a recital of the section itself. This Act was held void because it failed to re-enact and publish at length so much of the Act of 1875 as was amended.[1]

[1]Barrett's Appeal, 116 Pa. St. 486; and see Loftus v. Farmers' and Mechanics' National Bank, 133 Pa. St. 97; opinion of court below, page 101; s. c., 25 W. N. C. 459; 46 L. I. 46.

5. THE PROVISION DOES NOT APPLY TO INDEPENDENT ENACTMENTS.

The eleventh clause of Section 1 of Article VII of the Act of May 24th, 1887, P. L. 208, contained provisions as to grading, paving, and curbing of streets. These provisions were made simply and affirmatively without any express reference to other legislation. It was objected that this clause was invalid because it was an extension or amendment of a provision of the Act of June 2d, 1874, which was not published at length; "but the eleventh clause of Section 1 of Article VII of the Act of May 24th, 1887, is neither a revival, an amendment, an extension, or a conferring in the sense of the Constitution; it is part of an Act of the General Assembly, which is itself the highest exercise of legislative power, and repeals Acts inconsistent with itself, or supplied by its provisions. The objection, therefore, is not applicable."[1] The Act in question was subsequently declared invalid as a classification Act.[2]

The Act of June 1st, 1879, P. L. 150, entitled "A supplement to an Act for the regulation of boroughs, approved the

3d day of April, A. D. 1851," vested in the courts of Quarter Sessions power to alter the limits of any borough incorporated under the general borough law, and provided a method of procedure in such cases. This method of procedure was practically a re-enactment of the provisions of a former statute not referred to in the Act of 1879, which was held to be a valid Act.[3]

[1]Per GIBSON, J., Shoemaker v. Harrisburg, 4 C. C. R. 86.

[2]Ayars' Appeal, 122 Pa. St. 266.

[3]Pottstown Borough, 1 Montgomery County, 161, Id. 189, 117 Pa. St. 538; S. P., Lansdale Borough, 1 Montgomery County, 192.

6. THE PROVISION DOES NOT APPLY TO SUPPLEMENTS.

The Act of March 18th, 1875, P. L. 15, was entitled a supplement to the Act of May 23d, 1874, relating to the classification of cities and contained six sections in the form of original enactments upon various matters. "The objection, which seeks to break down the whole of the Act of 1875, that it violates Section 6, Article III of the Constitution in that it is amendatory of the Act of 1874, and, therefore, improperly drawn, because the Act of 1874 is not re-enacted and published at length, is not well taken. Simply because a law, properly expressed by title as a supplement to an Act, the title of which is fully set forth, by construction is incidentally amendatory of the previous Act, or even necessarily so when germane to the whole subject-matter, is therefore within the provision of the sixth section, Article III, would be a construction which would create a greater evil than that section was sought to remedy. All supplements are more or less amendatory. It was never intended that, because an Act had this character, it must necessarily include all verbiage of previous legislation within its language. The object of the section was to give a clear idea to legislators and citizens of what was intended as law, and to prevent the cover-

ing up of a design by reference to title only."[1] The revenue Act of June 30th, 1885, P. L. 193, abolished taxes on manufacturing corporations with some exceptions. It was objected that this was in violation of the provision in question, but the objection was overruled in the following language: "We apprehend that the Legislature complied wholly with the spirit of Section 6, Article III, in thus stating their intention. Clearness of apprehension was the object sought by that section. An exact and literal repetition of all the revenue laws in the body of this section, and a re-enacting of them, leaving out the manufacturing companies, would rather tend to confusion and want of clearness. If such were to be the rule, the repealing clause appended to Acts of Assembly would have no force. As we said, Commonwealth ex rel. Connolly v. Halstead (preceding case), decided at this term, every supplement to an Act is, in a sense, amendatory. The sixth section of Article III sought to remedy an evil, not create one."[2] Where the real purpose is to amend or extend the provisions of a former statute the constitutional provision is not evaded by styling the Act a supplement, thus, the Act of June 8th, 1891, P. L. 247, is entitled "A further supplement to an Act, entitled 'An Act extending the jurisdiction of the courts of this Commonwealth in cases of divorce, approved the ninth day of March, A. D. one thousand eight hundred and fifty-five.'" It enacts that the jurisdiction conferred in and by said Act to which it is a supplement "is hereby extended to all cases of divorce, from the bonds of matrimony and from bed and board, and for the causes therein mentioned, when it shall be shown," etc. The Act was held invalid.[3]

[1]HAND, P. J., Commonwealth v. Halstead, 1 C. C. R. 335; s. c., 2 C. P. Rep. 247.

[2]HAND, P. J., Sanderson v. Commissioners, 1 C. C. R. 342.

[3]Oakley v. Oakley, 1 P. D. R. 781; s. c., 11 C. C. R. 572; Burdick v. Burdick, 2 P. D. R. 622; see generally Pottstown Borough, 1 Montgomery County, 161; Id. 189; Lansdale Borough, 1 Montgomery County, 192.

7. The Provision Does not Apply to Repeals.

A section enacted at length intended to supply or amend a corresponding section of a pre-existing statute and thus operating by way of repeal of such pre-existing statute need not be accompanied by a recital at length of such pre-existing section.[1] Neither is it necessary that an independent enactment, either original or by way of supplement, which in effect repeals pre-existing statutes, should recite or refer to such pre-existing statutes.[2] Nor does the provision in question apply to a repealing statute, which in terms repeals, by reference to its title only, a previous statute.[3]

[1]East Grant Street, 121 Pa. St. 596; Evans's Appeal, 152 Pa. St. 401.

[2]Sanderson v. Commissioners, 1 C. C. R. 342.

[3]Commonwealth v. Evans, 6 Kulp, 145; and see Loftus v. Farmers' and Mechanics' National Bank, 133 Pa. St. 97; opinion of court below, page 101; s. c., 25 W. N. C. 459, affirming 46 L. I. 46.

The Act of May 5th, 1876, P. L. 124, fixed the salaries of assessors in cities of the second class. The Act of June 14th, 1887, P. L. 397, empowered the city councils of these cities to fix the salaries of all city officers. This repealed the Act of 1876 to that extent by implication, and the affirmative provision conferring the power on councils was not in violation of Article III, Section 6: Commonwealth v. Morrow, 40 P. L. J. 327.

8. The Provision Does not Apply in Cases of Revival of a Pre-existing Statute by Reason of the Repeal of a Repealing Act.

The Act of July 5th, 1883, P. L. 181, repealed the Act of May 21st, 1879, P. L. 72. The latter statute repealed the seventh section of the Act of March 31st, 1876, P. L. 13. The question being whether the seventh section of the Act of March 31st, 1876, was in force, it was decided in the affirmative, under the common-law rule, that the repeal of a

repealing Act revives the former law, and in reply to the objection that such revival by implication was contrary to the constitutional provision in question, it was said, "To compel the publication and re-enactment of all statutes which are restored by reason of the repeal of others would seem to be unnecessary as well as impracticable."[1]

"The Constitution does not make the obviously impracticable requirement that every Act shall recite all other Acts that its operation may incidentally affect, either by way of repeal, modification, extension, or supply. The harmony or repugnance of Acts not passed with reference to the same subject can only be effectually developed by the clash of conflicting interests and litigation, and the settlement of such questions belong to the judicial, not the legislative department."[2]

[1]WOODWARD, J., Commonwealth v. Evans, 6 Kulp, 145.
[2]Per Mr. Justice MITCHELL, Stuart's Appeal, 163 Pa. St. 210.

The Act of April 3d, 1872, P. L. 843, which was a local law for the county of Allegheny providing a license rate or fee lower than that which was provided by the general license law of May 13th, 1887, P. L. 108, was repealed by the Act of 1887. It being contended that the effect of the repeal of the Act of 1872 was to revive a former local Act of February 26th, 1855, P. L. 321, it was held that such was not the effect. One of the judges gave as a reason that such implied revival would be a violation of Article III, Section 6. Both judges agreed that repealing the local statute would not have the effect of re-enacting a local law: Durr v. Commonwealth, 3 C. C. R. 525; and see Commonwealth v. Kelly, 5 Kulp, 533; Wishart v. Leslie, 36 P. L. J. 223.

9. INDEPENDENT ENACTMENTS REFERRING TO PRE-EXISTING LAW.

A pre-existing statute may be referred to by way of illustration, and such was held to be the effect of the reference to the Act of 1806, in the procedure Act of May 25th, 1887, P.

L. 271.[1] In this case it was said: "Reference to the Act of 1806 might well have been omitted, and yet the third section of the Act of 1887 would contain a complete grant of the right to file a statement instead of a formal *narr.* It must be a concise statement of the plaintiff's demand. If this were all that is required, it would be sufficient. It is unnecessary to describe the details of the statement in a statute. That is a matter which has usually been left to the courts to regulate. But the Act of 1887 goes further, and requires in *assumpsit* a copy of the note, contract, book entries, or reference to the records on which the plaintiff's claim is founded, and not merely a statement of the date and amount thereof as authorized by the Act of 1806; while in trespass a concise statement of the plaintiff's demand is all that is required. Thus it will be seen that the Act of 1887 contains all the essentials of a complete statute without any aid from the Act of 1806. We are of the opinion, therefore, that the third section of the Act of 1887 is not unconstitutional."

The Act of June 14th, 1887, P. L. 395, which was entitled an Act in relation to the government of cities of the second class, provided in Section 3 that all executive powers and duties of the several officers of the city should be assigned, by ordinance, to the appropriate department therein provided for, and, when so assigned, all departments, bureaus, and officers now existing should be abolished. The Act continued:

SEC. 4. There shall be the following executive departments, the heads of which shall be chosen by city councils:

I. Department of Public Safety. II. Department of Public Works. III. Department of Charities. Sec. 5. For the purpose of redistributing the powers conferred and duties imposed upon the officers, departments, and boards of the city government, contained in existing laws, ordinances, and regulations, not repealed or supplied by the provisions of this Act, every power heretofore conferred or duty imposed upon any municipal executive officer, not inconsistent with the

provisions of this Act, shall be deemed and construed to be the power or duty of the proper department, board, or officer, who shall have control of the subject-matter in the appropriate department hereby created or authorized. Sec. 6. Whenever words are used in any existing law, ordinance, resolution, or contract in force prior hereto referring to any department or officer of city government, and such law, ordinance, or resolution is not supplied or repealed by this Act, they shall be deemed to mean and apply to the proper officer and department having relation to the subject-matter, whether named in this Act or in the ordinance reorganizing the departments. Sec. 7. The police power of taking information, making arrests and preservation of the peace, heretofore vested in the Mayor, shall hereafter vest in the Mayor and five police magistrates, all of whom shall not be of the same political party, to be appointed by the Mayor, subject to the approval of the city councils, in such districts of the city as shall, by ordinance, be designated, whose term of office shall be during good behavior, and until a successsor be appointed and approved. The said magistrates shall each receive such salary as may be fixed by ordinance, and they shall pay into the city treasury all costs and fines received by them in the discharge of their duties as police magistrates, and make such reports as may be required by ordinance.

In Pittsburg's Petition,[2] which was a case arising upon the petition of the city of Pittsburg for the appointment of a board of viewers for sewer improvements, Mr. Justice WILLIAMS said: "The other position taken is that Sections 1, 5, 6, 7, and 9 offend against Section 6, Article III, of the Constitution, which declares that 'no law shall be revived, amended, extended, or conferred by a reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length.' The first section is thought to violate this provision, by the declaration that the legislative powers of cities of the second class shall be vested as heretofore in two branches. This does

not extend or confer powers previously exercised in some other way to the two branches of the councils, but leaves the legislative power just where it was before, with no change in its extent, in the body exercising it or in the name or title of that body. The city councils possessed the power before the city came into the second class, and when it came it brought its councils with it, just as it brought its Mayor, with their powers and titles unchanged. Such a declaration does not violate the Constitution in any particular. The same thing may be said of the ninth section, which declares that certain offices named, including that of city treasurer and controller, 'shall remain as heretofore, except as herein otherwise provided.' These offices, with the incumbents, came also with the city into the new scheme of government, and became a part of it, as did the Mayor and councils. So far as new duties were put upon them, or old ones taken away, the Act made the necessary provisions, but where no change was made, the officers assumed the responsibilities and discharged the duties belonging to them, just as though no change in class had taken place. Nothing was added to or taken from their functions or powers, except by express words.

"The objection made to the fifth, sixth, and seventh sections is much more serious. These sections do undertake to confer powers, previously exercised by a number of officers whose offices are discontinued, upon the heads of departments created by the Act. They undertake to extend to these new officers all the Acts of Assembly relating to the duties and powers of all these unnamed and abolished offices, without even a reference to their dates, their titles, or their subject-matter. To understand what was, and what was not, within their control, it would be necessary to digest all the local laws relating to all the officers whose functions are thus gathered up and dropped into the hands of the 'heads of departments.' This mode of defining the powers of a newly-created officer is in violation of the letter and the spirit of

the constitutional provision, and cannot be sustained: Titusville Iron Works v. Oil Company, 122 Pa. St. 627; Donohugh v. Roberts, 11 W. N. C. 186."

The Act of April 22d, 1889, P L. 39, entitled "A further supplement to an Act regulating boroughs . . authorizing the corporate authorities to levy and collect a license tax on hacks, carriages, and other vehicles carrying persons or property for pay," etc., being in question, Mr. Justice STERRETT said: "The first section of the Act empowers the council of every borough 'to enact ordinances establishing reasonable rates of license tax on all hacks, carriages, omnibuses, and other vehicles used in carrying persons or property for pay, and limit the compensation for the same within the limits of said borough.' The second section provides 'that said ordinance shall be enforced as other borough ordinances are by law enforced, and the license tax shall be collected as other licenses, taxes, fines, and penalties are now authorized by law to be collected.' The power of the Legislature to pass such an Act cannot be questioned. There is nothing either in the title or in the body of the Act that offends against any provision of the Constitution."[3] In the court below, McILVAINE, P J., said: "The Act might well be characterized as 'a bunglesome piece of legislation,' yet we are not satisfied that it is wholly unconstitutional. It is true that the enactment of the first section is broader than the title, and so far as the power conferred on town councils to 'limit the compensation' for the use of hacks, etc., is concerned, it must be held to be unconstitutional. But, striking this out of the first section, it leaves the enactment the same as expressed in the title of the Act, and hence not repugnant to the clause of the Constitution which provides that the title of an Act shall clearly express the subject thereof: Section 3, Article III. Neither do we think the Act repugnant to Section 6, Article III, of the Constitution, for it does not revive, amend, extend, or confer the provisions of an existing law. It is a supplement of the Act of 1851, and simply adds one more power to the

many already conferred on the corporate officers of a borough. There can be no doubt that 'an entire Act is not necessarily unconstitutional, because the title fails to give notice of some particular matter contained therein.' The rule has been to sustain the portion of which the title gives notice: Dewhurst v. Allegheny City, 95 Pa. St. 437, and cases there cited. The first section of the Act confers the power on town councils 'to enact ordinances establishing reasonable rates of license tax on all hacks, carriages, omnibuses, and other vehicles used in carrying persons or property for pay, within the limits of boroughs.' The title of the Act gives full notice of this enactment, and the first section of the Act is thus far constitutional and must be sustained.

"The second section, in its provision that the license tax shall be collected as other licenses, taxes, fines, and penalties are now authorized by law to be collected, cannot all stand, because taxes and fines and penalties are not collected in the same way, but in a totally different way. To say that a license tax shall be collected as taxes are collected, and to say that a license shall be collected as fines and penalties are collected, is to prescribe two ways of collecting the license tax which are irreconcilably repugnant. And, as but one way of collecting the license tax was evidently intended to be pointed out, the rule is to take the last way pointed out; that is, the license tax is to be collected as fines and penalties are collected, before a justice of the peace under Section 7, Act of April 15th, 1835: Packer v. Railroad Company, 19 Pa. St. 211."[4]

The Act of February 14th, 1881, P. L. 3, relating to the fees of the receiver of taxes in cities of the first class, provided that he should have all powers and privileges and be subject to all the duties and liabilities conferred or imposed on the collector of outstanding or delinquent taxes, by any or all Acts of Assembly heretofore passed. This provision was held to be in violation of Article III, Section 6.[5]

The Act of June 17th, 1887, P. L. 409, entitled "An Act

relating to the lien of mechanics and others upon leasehold estates and property thereon," provided in Section 4, that "all proceedings under this Act to enforce collection of claims shall be as is now provided by law." This provision was held to be in violation of the constitutional provision in question, and it was further held, that as no rights or privileges were conferred which could be enforced without Section 4, the Act must fall in its entirety.[6]

[1]ARNOLD, J., Krause v. Pennsylvania R. R. Company, 4 C. C. R. 64; S. P., Kauffman v. Jacobs, 4 C. C. R. 462; Contra, Doud v. Insurance Company, 6 C. C. R. 329; Reeves v. Edsall, 1 Lack. Jur. 96.

[2]Pittsburg's Petition, 138 Pa. St. 401; and see Perkins v. Philadelphia, 156 Pa. St. 539, 156 Pa. St. 554; Act of May 24th, 1893, P. L. 124.

[3]Washington Borough v. McGeorge, 146 Pa. St. 248.

[4]Washington Borough v. McGeorge, 146 Pa. St. 248.

[5]Donohugh v. Roberts, 11 W. N. C. 186, C. P. Phila.

[6]McKeever v. Victor Oil Company, 9 C. C. R. 284; Swaney v. Washington Oil Company, 7 C. C. R. 351; Titus v. Elyria Oil Company, 1 P. D. R. 204.

The Act of June 10th, 1881, P. L. 93, entitled "An Act to enable the High Sheriff of any county of this Commonwealth to have an interpleader on a claim of property by a third person levied on by the sheriff on a writ of foreign attachment, enacted that Section 9 of the Act of April 10th, 1848, referred to by its title, and Section 1 of the Act of March 10th, 1858, referred to by its title, be extended and applied to claims made where property had been seized under process of foreign attachment. This Act was held void: Reynolds Lumber Company v. Reynolds, 4 P. D. R. 573; S. C., 12 Lanc. Law Rev. 383, 6 Delaware County, 255.

As tending to show the legislative practice upon this subject and its importance and difficulty, the following references gathered by a cursory reading of the last volume of the Pamphlet Laws (1895) are made. The learned reader must judge of the validity of the provisions cited:

Act in relation to the Banking Department, Section 4, page 6, "any wilful false swearing in any inquiry thereunder shall be perjury, and subject, upon conviction thereof, to the same punishment as provided by existing laws for the punishment of perjury."

Act to establish a department of agriculture, Section 1, page 17, "Said Secretary shall be *ex-officio* Secretary of the State Board of Agriculture, and shall succeed to all the powers and duties now conferred by law upon the Secretary of said Board." Section 2, page 18, "Said report and bulletins shall be printed by the State Printer in the same manner as other public documents." Section 3, page 18, "The said Secretary shall also be and is hereby charged with the administration of all laws designed to prevent fraud or adulteration in the preparation, manufacture, or sale of articles of food, the inspection, sale, or transportation of the agricultural products, or imitations thereof, and all laws relating to diseases of domestic animals, and to the manufacture and inspection of commercial fertilizers." Section 4, page 19, "The Dairy and Food Commissioner shall, under the direction of the Secretary, perform the duties prescribed by an Act approved May twenty-sixth, one thousand eight hundred and ninety-three."

Act to provide for additional employés and officers of the House, Section 1, page 22, provides for certain clerks and doorkeepers, "whose compensation and mileage shall be the same as the compensation and mileage now paid to the transcribing clerks and assistant doorkeepers." Certain janitors "whose compensation and mileage shall be the same as the compensation and mileage now paid to the janitor of the committee-rooms and basement."

Act to establish a separate orphans' court in the county of Schuylkill, Section 1, page 31, "A judge shall be elected and commissioned for the same term and in the same manner as the judges of the courts of common pleas of said county, and the annual salary of said judge shall be the same as is paid to the judges of the courts of common pleas in said county, to be paid in the same manner as the salaries of said judges of the courts of common pleas are now or may be by law payable." Section 4, page 31, "The said court shall have and exercise all the jurisdiction and powers now vested in or which may hereafter be conferred upon the orphans' and registers' courts of said county."

Tenement House Act, Section 5, page 35, "The deputy inspectors, now and hereafter appointed under the provisions of this Act, shall have the same powers and compensation as those appointed under the provisions of the Factory Act, approved June third, one thousand eight hundred and ninety-three, and shall be subject in like manner to the orders of the Factory Inspector."

Act with reference to Boards of Commissioners of Normal Schools, Section 2, page 41, "The expenses incurred by the members of the several boards of examiners shall be paid by the State, as provided by existing laws."

City annexation Act, Section 1, page 48, "The said tickets so received shall be counted and return thereof made to the prothonotary of said county, duly certified in the manner required by law, and in receiving, counting, and making returns of the votes cast, the officers and clerks conducting said election shall be governed by the laws of this Commonwealth regulating general elections, and all the electors, election officers, and clerks voting at or in attendance upon said election shall be subject to all the requirements and liable to all the penalties imposed by the election laws of this Commonwealth." Section 1, page 49, councils, "Shall be elected at the February election in said year one thousand eight hundred and ninety-eight, under the provisions of the laws regulating the election of such councilmen of cities of the second class, . . . the terms of all officers hereafter elected or appointed in the municipality proposed to be annexed under the provisions of this Act to the city aforesaid, shall cease and determine upon the day such annexation takes effect, and all the duties devolving upon such officers shall thereafter be assumed and performed by the proper officers of said city of the second class." Section 2, page 50, "Said ballots shall be prepared and distributed in accordance with the general law relating to the election of public officers." Section 3, page 50, "The said election officers shall make returns of said election and the same shall be counted and duly certified according to law."

Annexation Act, Section 1, page 57, "The said tickets so received shall be counted and a return thereof made to the prothonotary of said county, duly certified in the manner required by law; and in receiving, counting, and making returns of the votes cast, the officers and clerks conducting said election shall be governed by the laws of this Common-

wealth regulating general elections for public officers; and all the electors, officers, and clerks voting at or in attendance upon said election shall be subject to all the requirements and liable to all the penalties imposed by the election law of this Commonwealth." Section 1, page 58, "Who shall organize in the manner provided by law on the first Monday of March next ensuing their election." Section 2, page 59, "Said ballot shall be printed and distributed in accordance with the general law relating to the election of public officers."

Compulsory School Law, Section 2, page 73, "To be applied and accounted for by such treasurers in the same way as other moneys raised for school purposes; such fines shall be collected by a process of law similar to the collection of other fines." Section 4, page 74, "And the said assessors shall be paid a per diem compensation for their services, a sum equal to the compensation paid under existing laws for assessors of election."

Act relating to indexing writs of *scire facias*, Section 1, page 84, "To enter upon the judgment docket or index all writs of *scire facias* upon mechanics' liens in the same manner as writs of *scire facias* upon judgments are now required to be entered."

Convict Labor Commission Act, Section 1, page 87. "Vouchers for such expenses shall be paid upon the warrant of the chairman of said commission drawn upon the State Treasurer and audited by the Auditor-General in the usual way."

Act to establish the State Live Stock Sanitary Board, Section 1, page 91, "This board shall consist of . . . and the State Veterinarian, who shall be a competent and qualified person as provided in the Act, entitled 'An Act to create a department of agriculture and define its duties.'" Section 7, page 92, "All necessary expenses . . shall be paid by the State Treasurer upon the warrant of the Auditor-General in the manner now provided by law."

Amendment of Street Railway Act, Section 14, page 94, "With the right of appeal now secured under Section 8, Article XVI, of the Constitution, and of an Act for the further regulation of appeals from assessment of damages to owners of property taken for public use, passed June thirteenth, one thousand eight hundred and seventy-four."

See Act to provide for the taking of recognizance and oath on *certiorari*, page 100.

Act relating to county solicitors, Section 3, page 102, "Shall perform all duties now enjoined by law upon county solicitors."

Life saving companies, Section 5, page 104, "Said fine to be recovered by suit as other fines and taxes are now by law recoverable."

Street Act, Section 2, page 106, "In exercising the power aforesaid all proceedings for the ascertainment of damages and the assessment of benefits incident thereto shall be as now provided by law in reference to payment of costs, damages, and expenses of public improvements within municipal corporations."

Act relating to poor and road taxes, Section 1, page 111, "To collect either road or poor taxes by levy and sale in the same manner as school and county taxes are now by law collected."

Recording Act, Section 2, page 113, "In the same manner and subject to the same rights and restrictions as to the time and manner of recording and indexing the same as is now provided by the laws of this Commonwealth for the proving, acknowledging, and recording of deeds."

Act as to recording plans, Section 1, page 124, "Said sum or sums to be recovered as debts of like amount are by law recoverable."

Act to provide for the employment of a stenographer in the Adjutant-General's department, Section 1, page 127, "And the stenographer so selected and appointed shall be paid in the same manner as other clerks and employés of the State government."

Act as to tipstaves, Section 1, page 129, "Shall be paid in the same manner as such tipstaves are now paid."

Elevator Act, Section 2, page 129, "Said fine to be collected as other debts due the Commonwealth."

Public safety Act, Section 43, page 166, "By the same process and proceedings and under the same restrictions as are now provided for or required by law for the collection of any fines or penalties in such city."

Appropriation Act, Section 1, page 167, "The said appropriation to be paid upon the warrant of the Auditor-General drawn in the usual manner."

Library Act, Section 2, page 170, "Such tax to be levied and collected in the like manner with the general taxes of said cities and to be known as a library fund."

Judicial apportionment Act, Section 2, page 193, "The election of judges shall be held and conducted in the several election districts in the same manner in all respects as elections for representatives are or shall be held and conducted, and by the same judges, inspectors, and other officers, under provisions of existing laws regulating elections in this Commonwealth." Section 7, page 194, "The said additional law judge shall possess the same qualifications which are required by the Constitution and laws for the president judge of said district, and shall hold his office for a like term and by the same tenure, and shall have the same powers, authority, and jurisdiction, and shall be subject to the same duties, restrictions, and penalties, and shall receive the same compensation as the president judge of said district."

Superior Court Act, Section 1, page 212, "The vote for said office shall be cast and counted according to law." Section 3, page 213, "The necessary dockets, books, seals, stationery, and other supplies shall be obtained and furnished by the Secretary of the Commonwealth in the same manner as books and supplies are furnished to his own department." Section 11, page 220, "The compensation of each judge in the Superior Court shall be seven thousand five hundred dollars per annum, to be paid quarterly, upon the certificate of the judge, according to the practice of the accounting departments of the Commonwealth."

Ship canal Act, Section 5, page 223, "They shall, if authorized by a majority of the stockholders at a meeting called for that purpose in the manner provided by law, file with the Secretary of the Commonwealth a certificate setting forth the amount of such increase."

Repealing Act, Section 2, page 242, "That the provisions of the general road laws of this Commonwealth are hereby extended to the township of Apolacon, in the county of Susquehanna, any law or part of any law to the contrary notwithstanding."

School Act, Section 3, page 245, "The township auditors shall pass upon such bills, and their action thereon shall have the same effect as upon other expenditures of such school boards."

Act as to indexing Federal judgments, Section 1, page 247. Transcripts of judgments of the Federal courts duly certified are to be "indexed in the same manner as transcripts of records of judgments and decrees obtained in any

of the courts of general jurisdiction of this State are entered and indexed, to make them liens, and (prothonotaries) are authorized to charge and receive the same fees for the same."

Poor Law, Section 1, page 271, "That said county shall, in all cases, have full recourse to recover all expenses incurred in behalf of said person so committed, from the parties or persons or poor district properly chargeable therewith under the laws of this Commonwealth."

Act as to witnesses, Section 1, page 279, "Testimony . . . may be taken upon a rule entered in the office of the prothonotary of the court of common pleas in the county where such cause or matter is pending in like manner as rules are now entered for the taking of testimony of witnesses residing within the Commonwealth upon notice to be given to the other side in like manner as now provided by existing law or rule of court."

Memorial Day Act, Section 1, page 298, "To pay the same out of such moneys in their respective treasuries as are not otherwise appropriated, in the manner appropriations are now made and paid."

Corporation Act, Clause 7, page 313, "Subject to the same penalties for obstructions thereof as may now or shall hereafter be enforced for the obstruction of public streets in the municipality in which said approaches may be located."

Pure Food Act, Section 6, page 318, "The agent of the Department of Agriculture, known as the Dairy and Food Commissioner of this State, shall be charged with the enforcement of all the provisions of this Act and shall have the same power to enforce the provisions of this Act that is given him to enforce the provisions of the Act by which he receives his appointment."

Indigent insane Act, Section 1, page 321, "Shall hereafter be entitled to the same allowance for the care and treatment of the indigent insane as is given by the Commonwealth to State hospitals for the insane, under the conditions prescribed by the Act of Assembly, approved June thirteenth, one thousand eight hundred and eighty-three."

Night watchman Act, Section 1, page 333, "All persons so appointed with the approval aforesaid, as night watchmen shall have, exercise, and enjoy all the rights, powers, and privileges now vested by law in constables or police officers duly elected or appointed in said cities or boroughs."

Road Law, Section 14, page 341, "All warrants for the

payment of any portion of the money raised for the purposes aforesaid shall be issued by the said commissioners, or a majority of them, in the manner now provided by law in the several counties."

Park Act, Section 2, page 350, "In exercising the power aforesaid all proceedings for ascertaining damages and assessing the benefits incident thereto shall be in accordance with the law authorizing cities of this Commonwealth to acquire, by purchase, or otherwise, private property for public park purposes."

Stock brokers' Act, Section 3, page 398, "Which penalty shall be collected on an account settled by the accountant officers as taxes on bank dividends are now collected and settled."

Insurance Act, Section 2, page 402, "Any company entitled to the benefits of this Act and desirous of availing itself of the same, shall furnish the affidavit as to paid-up capital required by the said supplementary Act, and conform to all other conditions and requirements thereof applicable to companies organized under the provisions of the said Act, approved the twenty-ninth day of April, A. D. 1874, and the aforesaid supplement thereto."

Controllers' Act, Section 15, page 407, "That all duties devolved on the county auditors by the Act of April fifteenth, one thousand eight hundred and thirty-four, and all powers conferred on them by said Act shall be performed and exercised by the county controller so far as regards county accounts and State taxes for which the county is or may be liable, and all other accounts with the treasurer with the Commonwealth shall be audited by the auditor of the accounts of prothonotaries, clerks, et cetera, appointed by the court of common pleas under the Act of April twenty-first, one thousand eight hundred and forty-six, and its supplements. And the report required by the seventh section of this Act shall have the same effect as the report of the auditors under said Act of the fifteenth of April, one thousand eight hundred and thirty-four, with like rights of appeal therefrom."

Teachers' institute Act, Section 9, page 416, "The superintendent of the schools of said city or borough shall have power to call a teachers' institute and to draw from the county treasury money for the support of the same in like manner and to the same extent as the county superintendents of this Commonwealth are now empowered to do."

Act relating to board of commissioners of public grounds and buildings, Section 2, page 423, "The superintendent of construction shall be paid a per diem salary out of the fund appropriated for the improvement which he is to supervise in like manner as superintendents are now paid out of said fund by the architect or trustees of the institute so benefited."

Consideration of the foregoing, which instances many phases of legislation and illustrates many difficulties in the drafting of bills, may lead to question whether the two clauses of Article III, Section 6, should not be construed together by regarding the second as an amplification of the first for greater emphasis, and thus limiting the scope of the article to cases wherein the attempt is to revive, amend, or extend or confer the provisions of, specific statutes directly referred to.

Article III, Section 6, may be regarded as owing its origin, in part, to that stress for reform which had for its principal object the eradication of local and special legislation. So regarded, it may be placed with a number of other cumulative provisions found in the next article, which deals with that subject. One of the greatest abuses in legislative practice in connection with local and special bills was the covering up of snakes under the form of legislation prohibited by Section 6. But after the substance had been prohibited it was in vain to denounce the form, and hence it follows that, under present conditions, Section 6 must be so construed as not unduly to hamper general legislation. It was intended to remove a mischief, not to create one.

Legislation upon general, as distinguished from special and single subjects, which involves not one but many other laws, is always difficult, and its effect must usually be settled by litigation. The necessity for the comparison and construction of laws by the judiciary cannot be removed in such cases by a constitutional provision. Statutes related to or forming part of a system, or designed to transform it at a given point, or to reproduce it with modifications, or under other authority, cannot always be self-sustaining or self-explanatory. They must usually be expressed in general terms and can never be understood save in connection with the system to which they relate. This observation may be illustrated by reference to the instance given above relating to the creation of a separate orphans' court in the county of Schuylkill. If the section be deemed applicable to such a case, then a statute must be drafted comparing in size with a volume of the Pamphlet Laws,

and being enacted, its validity is imperiled under Article V, Section 26, by the smallest deviation either of defect or excess, from existing law relating to the jurisdiction and practice of orphans' courts.

10. THE PROVISION CANNOT BE EVADED BY AN EXPOSITORY STATUTE.

The Act of June 17th, 1887, P. L. 413, entitled "An Act relating to the liens of mechanics and others upon buildings," enacts in its first section that the provisions of the Act of Assembly of June sixteenth, Anno Domini one thousand eight hundred and thirty-six, entitled "An Act relating to the lien of mechanics and others upon buildings," and the Act of Assembly of April sixteenth, Anno Domini one thousand eight hundred and forty-five, entitled "An Act concerning sheriffs' and coroners' sales and for other purposes," according to the true intent and meaning thereof, shall be construed to include claims for labor done by mechanics and laborers in the erection or construction of a building, as liens are now allowed for material furnished: *Provided*, That no lien will be allowed for a sum less than ten dollars.

In Titusville Iron Works v. Keystone Oil Company,[1] Mr. Justice WILLIAMS said: "The first section declares that the provisions of the Acts of 1836 and 1845 shall be construed to include claims for labor done by mechanics and others in the erection and construction of buildings—*i. e.*, for all labor done, no matter at whose instance or upon whose credit it was done. It would be difficult to imagine a plainer violation of the constitutional provision." He further said: "Expository statutes, and statutes directing the courts what construction should be given to previous legislation were not uncommon prior to 1874, and the courts, while pronouncing all such legislation to be judicial in its character and void as to any retroactive effect intended, yet sought to give effect to the legislative will however expressed as to future cases. As the Constitution prescribed no form or order into which the legislative expression was to be cast, the court sought to

give effect to the purpose, however expressed. But the Constitution of 1874, Section 6, of Article III, already referred to, requires all statutes to be self-explanatory and complete in their provisions, and forbids the extension, amendment, revival, or the use of any other method of conferring the benefits of previous legislation short of a re-enactment at length. This effectually closes the old and well-worn short-cut route, and we cannot, no matter how much inclined we might be to do so, give effect, even as to future cases, to expository Acts like that under consideration. They are void as an unauthorized exercise of judicial power, and they are void because of the infraction of Section 6, of Article III.

"It has been suggested that the second section of the Act might stand, though the first should, for the reasons given, fall. We do not think so. An examination of the Act as a whole shows that its provisions all relate to the same class of claimants, and were intended to add for the benefit of that class some provisions not found in the Acts of 1836 and 1845. If, as we hold, these claimants are not brought under the Acts referred to by the first section, the remaining sections have nothing on which they can take effect. They are a headless trunk, and our system of liens for the benefit of mechanics and materialmen remains as it was before the Act of 1887 was passed."

[1]Titusville Iron Works v. Keystone Oil Company, 122 Pa. St. 627; and see East Grant Street, 121 Pa. St. 596; Gardner v. Gibson, 21 W. N. C. 121; Roth v. Hobson, 5 C. C. R. 17; 21 W. N. C. 64; Phillip's Estate, 6 C. C. R. 499; Bennett v. Maloney, 5 Kulp, 537.

11. Re-enactment of Former Statute by way of Amendment Without Regarding Intervening Repeal or Amendment.

The third proviso to the first section of the Act of April 9th, 1872, P. L. 47, entitled "An Act for the better protection of the wages of mechanics, laborers, and others," required

that claims should be filed in the office of the prothonotary of the proper county in the same manner as mechanics' liens. This proviso was repealed by the second section of the supplementary Act of May 8th, 1874, P. L. 120. The Act of June 13th, 1883, P. L. 116, indicated by its title a purpose to amend the first section of the Act of 1872 so that the wages of servant girls, washerwomen, clerks, and others, should also be preferred, and its obvious purpose was to extend to new classes of claims the provisions of the Act of 1872.

The draftsman of the Act of 1883 copied the whole of the first section of the Act of 1872, interpolating such words as were requisite to extend the same to include the new classes of wage claimants, but copied and so caused to be re-enacted the third proviso which had been repealed by the Act of 1874. The title gave no notice of this, and the Act of 1883 was held inoperative as to the said proviso. In a case arising upon this statute,[1] the learned auditor, Hon. Charles R. Buckalew, said: "But independent of any constitutional question arising upon this statute, we may be greatly aided in its construction by considering the title in connection with the body of the Act, as will be apparent upon an examination of the latter. The Act of 1883 recites as existing law the whole of the first section of the Act of 1872 in its original form, and appears also to leave the whole of it in force. The section is left unchanged in the second recital except by the insertion of additional words conformed to the title, and which words have no necessary connection with the proviso. That the Act was carelessly drawn appears from both text and title, and from the known relations of the Act to both prior and subsequent laws. It begins by saying, 'so much' of the first section of the Act of 1872, which reads 'as follows,' and then proceeds to recite the section at full length, so that the 'so much' is found to be the whole, and to include that part of the original section which had been previously repealed. After the recital of the section, the Act goes on to say that the

section 'is hereby amended to read as follows,' and proceeds to recite over again precisely the same form of section with an addition of the interpolated words above mentioned. By this language, upon the face of the Act, it already appears that the amendment intended was the interpolated words and nothing else.

"The section read before without them, and it was to read with them, but otherwise exactly as before. It may be added that the implication from the face of the Act that the proviso was to be law in future is no stronger than the implication that it was existing law when the Act was passed—an implication which we know to be false. We get away from difficulties by rejecting both implications, and accepting the recitals of the old section—outside of the new matter inserted—as formal and not as enactive parts of an amendatory law. There was apparently a bungling attempt to adapt a form of the new statute to the requirements of the sixth section of the third Article of the Constitution, which resulted in reciting and republishing both the existing and repealed parts of the old section which it was proposed to amend. It is evident that the writer of the Act did not intend, at the outset, to copy or recite the whole of the old section, or revive or enact the whole, but only to recite so much of it as he intended to amend by the new matter indicated in the title; but afterwards by mistake, or in supposed conformity with constitutional form required for an amendatory Act, the entire section was copied and republished in the new Act. The Act of 1883 has no repealing clause, nor any reference whatever to the repealing Act of 1874. But that Act of 1874 was too conspicuous and important to have been overlooked when the Act of 1883 was under consideration, if attention was at all directed to the question of filing labor claims. Therefore, the fact that the Act of 1874 was not repealed in express terms is strong evidence that it was to remain undisturbed. Repeals by implication are not favored by the law, and when admitted the repugnancy of the new statute

to a former one must be clear, palpable, and beyond honest dispute."

A still more complicated state of legislation is found in another case,[2] which involved an original enactment of 1874, a supplement of 1878, amending the Act of 1874, by providing that a certain part should read as provided in the supplement, thus repealing the original provisions, save as amended, and a supplement of 1883, in which no notice was taken of the repeal by the supplement of 1878, but which adopted the original provisions of 1874, a part of which had been included in the supplement of 1878, and re-enacted them as intended to be amended by the said supplement of 1883. It was held that the supplements of 1878 and 1883 might both stand, except in so far as the provisions of the supplement of 1883 were inconsistent with those of 1878. In 1889 another supplement was passed which again quoted the provisions of the Act of 1874, without reference to the previous enactments of 1878 and 1883. It was held that all three enactments might stand and be given effect in order, the later provisions prevailing over the earlier.

The Act of April 4th, 1789, Sm. L. 331, relating to the lien of judgments, was amended by the Act of March 26th, 1827, P. L. 129. The Act of February 24th, 1834, Section 25, P. L. 77, provided that the lien of a judgment should continue to bind the estate of a decedent for five years without revival, and during that term judgments should take rank according to their priority at the time of death.

The Act of June 1st, 1887, P. L. 289, amended the Act of 1827, by adding a clause preventing the continuance of the lien of a judgment as against a *terre tenant* whose deed is recorded, unless he be named as *terre tenant* in the original *scire facias*. In a case involving the application of this legislation,[3] Mr. Justice MITCHELL said: "This appears to be the whole scope of the amendment, but in obedience to the constitutional requirement the Act quotes the whole of section first of the Act of 1827, and then re-enacts it in the same words,

with the addition above mentioned. In so doing it necessarily re-enacts the words 'and no judgment shall continue a lien . . for a longer period than five years . . . unless revived,' etc., and the argument is strongly urged by appellant, first, that the Act of February 24th, 1834, continuing the lien of judgments against the lands of a decedent, being in *pari materia,* is repealed by the general negative words of the Act of 1887, and, secondly, that it cannot be considered as excepted from such effect, and allowed to remain as an amendment to the Act of 1827, because it is not 're-enacted and published at length,' as required by Section 6, of Article III, of the Constitution.

"The second proposition may be disposed of first. The Act of 1887 does not undertake to amend the Act of 1834, and therefore did not need to repeat its terms. The constitutional provision has reference to express amendments only. Its object, like that of Section 2, of the same article, requiring each Act to have its subject clearly expressed in the title, was to secure to the legislators themselves and others interested, direct notice, in immediate connection with proposed legislation, of its object and purpose. The Constitution does not make the obviously impracticable requirement that every Act shall recite all other Acts that its operation may incidentally affect, either by way of repeal, modification, extension, or supply. The harmony of repugnance of Acts not passed with reference to the same subject can only be effectually developed by the clash of conflicting interests in litigation, and the settlement of such questions belongs to the judicial, not the legislative department. No constitutional provision is involved in the present case.

"The words of the Act of 1887, 'no judgment shall continue a lien,' etc., are general and negative, and *prima facie* therefore repeal everything in conflict with them. But they are not to be extended to subjects not within the legislative intent. They are part of the Act of 1827, and are re-enacted without change, *pro forma,* in order to add the subsequent

provision about *terre tenants*. . . . The Act of 1834 was entitled 'An Act relating to executors and administrators,' and not only its title, but its seventy carefully drawn sections show that it was intended to deal directly only with that subject, and touched the subject of judgments only incidentally in connection with the estates of decedents. The Legislature, therefore, in 1887 had before it a clear distinction between classes of judgments, existing for more than half a century under separate statutes, and when under such circumstances it took up one of those statutes for amendment, we must assume that it legislated with that established distinction in view, until it shows a clear intention to disregard or abolish it. Notwithstanding, therefore, the generality and the negative character of the language of the Act of 1887 we are of opinion it has not affected the Act of 1834."

[1]Rogers v. Glendower Iron Works, 17 W. N. C. 444.
[2]Commonwealth v. Taylor, 159 Pa. St. 451.
[3]Stuart's Appeal, 163 Pa. St. 210.

12. MAKING A LOCAL STATUTE GENERAL WHERE THE LOCAL STATUTE, ENACTED PRIOR TO 1874, EXTENDED THE PROVISIONS OF A PRE-EXISTING STATUTE.

The Act of May 1st, 1861, P. L. 550, was entitled a supplement to an Act relating to the liens of mechanics and others upon buildings, approved the 16th day of June, 1836, so far as it relates to certain counties, and enacted in its first and only section that the said recited Act and its supplements shall hereafter be held and taken to apply to repairs, alterations, etc., provided that this Act shall apply only to Chester, Delaware, and Berks counties.

The Act of May 18th, 1887, P. L. 118, entitled "A supplement to an Act relating to the liens of mechanics and others upon buildings," recited the title as well as the first and only section as above, and declared that the same be and is hereby

extended to all the counties of the Commonwealth. The validity of this Act was sustained. Said WHITE, P. J.: "It must be remembered when the Act of 1861 was passed it was entirely constitutional to extend the provisions of existing statutes by reference to their title only, and such was a prevailing practice of legislation. Being then a valid Act so as to extend the provisions of the Act of 1836 by reference to its title, the Legislature of 1887, under the new rule prescribed by the existing Constitution could extend this Act of 1861 and give it full effect throughout the State by re-enacting and publishing it at length as was done. . . . It was not necessary to re-enact and publish at length again the Act of 1836, to require this to have been done by the Act of 1887 would have denied practically the validity of the form of the Act of 1861."[1]

The Supreme Court in a *per curiam* opinion affirming the judgment of the court below said: "While said Act may be objectionable in form, it is, nevertheless, in substantial compliance with Section 6, of Article III, of the Constitution. It not only quotes the title of the Act of June 16th, 1836, but it re-enacts and publishes at length so much thereof as by its supplement of May 1st, 1861, is extended and amended."[2]

[1]Purvis v. Ross, 12 C. C. R. 193.

[2]Purvis v. Ross, 158 Pa. St. 20; Smyers v. Beam, 158 Pa. St. 57.

III.

LOCAL AND SPECIAL LEGISLATION.

Article I, Section 5. Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Article III, Section 7. The General Assembly shall not pass any local or special law.

(1) Authorizing the creation, extension, or impairing of liens.

(2) Regulating the affairs of counties, cities, townships, wards, boroughs, or school districts.

(3) Changing the names of persons or places.

(4) Changing the venue in civil or criminal cases.

(5) Authorizing the laying out, opening, altering, or maintaining roads, highways, streets, or alleys.

(6) Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State.

(7) Vacating roads, town-plats, streets, or alleys.

(8) Relating to cemeteries, graveyards, or public grounds not of the State.

(9) Authorizing the adoption or legitimation of children.

(10) Locating or changing county seats, erecting new counties, or changing county lines.

(11) Incorporating cities, towns, or villages, or changing their charters.

(12) For the opening and conducting of elections, or fixing or changing the place of voting.

(13) Granting divorces.

(14) Erecting new townships or boroughs, changing township lines, borough limits, or school districts.

(15) Creating offices, or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election, or school districts.

(16) Changing the law of descent or succession.

(17) Regulating the practice or jurisdiction of, or changing the rules of evidence in, any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery, or other tribunals, or providing or changing methods for the collection of debts or the enforcing of judgments, or prescribing the effect of judicial sales of real estate.

(18) Regulating the fees or extending the powers and duties of aldermen, justices of the peace, magistrates, or constables.

(19) Regulating the management of public schools, the building or repairing of school-houses, and the raising of money for such purposes.

(20) Fixing the rate of interest.

(21) Affecting the estates of minors or persons under disability, except after due notice to all parties in interest, to be recited in the special enactment.

(22) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the treasury.

(23) Exempting property from taxation.

(24) Regulating labor, trade, mining, or manufacturing.

(25) Creating corporations, or amending, renewing, or extending the charters thereof.

(26) Granting to any corporation, association, or individual any special or exclusive privilege or immunity, or to any corporation, association, or individual the right to lay down a railroad track.

(27) Nor shall the General Assembly indirectly enact such special or local law by the partial repeal of a general law, but laws repealing local or special Acts may be passed.

(28) Nor shall any law be passed granting powers or privileges in any case, where the granting of such powers and privileges shall have been provided for by general law, nor where the courts have jurisdiction to grant the same, or give the relief asked for.

Article III, Section 8. No local or special bill shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or the thing to be affected may be situated, which notice shall be at least thirty days prior to the introduction into the General Assembly of such bill, and in the manner to be provided by law; the evidence of such notice having been published shall be exhibited in the General Assembly before such Act shall be passed.

Article III, Section 21. . . No Act shall prescribe any limitation of time within which suits may be brought against corporations for injuries to persons or property, or for other causes, different from those fixed by general laws regulating actions against natural persons; and such Acts now existing are avoided.

Article V, Section 26. All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction, and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process and judgments of such courts, shall be uniform; and the General Assembly is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the judges of the courts of common pleas and orphans' courts.

Article VIII, Section 7. All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State, but no elector shall be deprived of the privilege of voting by reason of his name not being registered.

Article V, Section 17. . . . The General Assembly shall by general law designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto. . . .

Article IX, Section 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may by general laws exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity.

Article XVI, Section 7. . . . The stock and indebtedness of corporations shall not be increased except in pursuance of general law. . . .

Article XVI, Section 18. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and to connect the same with other lines; and the General Assembly shall, by general law, of uniform operation, provide reasonable regulations to give full effect to this section. . . .

Constitution.

LOCAL AND SPECIAL LEGISLATION.

CHAPTER I.

GENERAL PRINCIPLES.

1. The constitutional provisions generally.
2. What is meant by a special or local law.
3. The constitutional provisions are to be so construed as to prevent the mischief designed to be remedied by their adoption.
4. The provisions as to local and special legislation apply only to the General Assembly.
5. A law is general which contains an exception rendering it apparently special, if the exception be made pursuant to a special constitutional provision.
6. A law is general, though its operation may be impeded by pre-existing special laws, and hence such laws may be saved by exception.
7. A law may be general as to a class of persons, and therefore valid, although special or local as to its subject-matter.
8. A general law may contain special provisions necessary to render it effective.

1. The Constitutional Provisions Generally.

The constitutional provisions related to the present subject are of two kinds, affirmative and negative. Those of

Article III, Section 7, are negative. The article begins, "The General Assembly shall not pass any local or special law," and proceeds to enumerate the subjects within the prohibition. The provision of Article III, Section 21, as to limitation of suits is negative. Other provisions are affirmative; thus, Article V, Section 26, declares that all laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction, and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process and judgments of such courts, shall be uniform. These provisions may be considered in connection with the negative provisions of Article III, Section 7, upon judicial subjects. Article VIII, Section 7, declares that all laws regulating the holding of elections by the citizens, or for the registration of voters shall be uniform throughout the State. Upon the same subject, Article III, Section 7, prohibits local and special laws for the opening and conducting of elections, or fixing or changing the places of voting. The Bill of Rights provides that all elections shall be free and equal. Article VIII, Section 17, requires the General Assembly to designate, by general law, the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto. Article IX, Section 1, requires that all taxes shall be levied and collected under general laws, and provides that exemptions so far as permitted shall be likewise made. A prohibition as to exempting property from taxation is to be found in Article III, Section 7. By Article XVI, Section 12, certain matters relating to telegraphs are to be subjected to reasonable regulation by general law of uniform operation. The affirmative provisions are usually general. The negative provisions are usually specific.

The prohibition, in Article III, Section 7, of local or special laws changing the law of descent or succession, or fixing the rate of interest, are related to the provisions already referred to designed to secure uniformity of law. Other provisions of

the same section may be classified as relating to governmental affairs, either political, executive, or administrative, such as those relating to the affairs of counties, cities, townships, boroughs, wards, and school districts; to roads, highways, streets, alleys, ferries, bridges, town-plats, cemeteries, graveyards, and public grounds not of the State; to elections; to changing the names of persons or places and to the release of fines, penalties, and forfeitures. Others relate to more purely legislative matters, such as those relating to the estates of minors and persons under disability, to regulating labor, trade, mining, or manufacturing; to the creation of corporations, or the altering or amending their charters; to granting special privileges or immunities, or granting powers or privileges where the granting of such powers and privileges shall have been provided for by general laws, or where the courts have jurisdiction to grant the relief asked for, and to evasions by partial repeal of general law. Other provisions relate to the judicial power, such as those relating to liens, divorces, venue, adoption, and the regulation of the practice, jurisdiction, and procedure of judicial tribunals.

In this connection reference may be made to certain provisions made in the singular; thus, in Article IX, Section 8, "any city the debt of which now exceeds seven per centum of such assessed valuation may be authorized by law to increase the same three per centum in the aggregate at any one time upon such valuation;" and in Article XVI, Section 10, "the General Assembly shall have the power to revoke or annul any charter of incorporation," &c., and in Article III, Section 27, "any county or municipality may appoint (inspection) officers when authorized by law." How far these special provisions may be regarded as exceptions to the general declarations elsewhere made upon the same subjects and whether they authorize special laws, may be a question.[1]

Other provisions expressly contemplate exceptional special legislation; for example, Article V, Section 6, relating

to increasing the number of courts or judges; Article V, Section 22, relating to the establishment of separate orphans' courts; Article V, Section 12, relating to magistrates courts in Philadelphia.

[1]Wheeler v. Philadelphia, 77 Pa. St. 338-351, wherein Mr. Justice PAXSON (*arguendo*) said: "If the complainants were right in their position in regard to the classification of cities, and that the Act classifying cities is a special Act applicable to Philadelphia alone, it would not help them. The Legislature is authorized by the express terms of the Constitution to empower by special Act a city to increase its debt. The language of that instrument is 'but *any* city, the debt of which exceeds seven per centum, may be authorized by law to increase the same.' It was entirely competent for the Legislature to have passed an Act authorizing the city of Philadelphia, by name, to increase its debt." The provision referred to was exceptional and temporary. A city whose indebtedness exceeded seven per centum at the time of the adoption of the Constitution, but passed afterward below that limit, fell into the category of all the other cities of the Commonwealth, was thereafter governed by the general provisions of the Constitution, and could not act under this one: Pepper v. Philadelphia, 181 Pa. St. 566; s. c., below, 6 P. D. R. 317.

2. WHAT IS MEANT BY A SPECIAL OR LOCAL LAW.

A special law within the meaning of the Constitution is one applicable to less than a class of subjects. A local law is one applicable to less than a class of places; it is a special law of local application. Both definitions involve the principle of classification, and a right understanding of this principle frequently solves all difficulty in the application of the constitutional provisions. Instances of prohibited special legislation tending to illustrate the foregoing definition may be found in Article III, Section 7, as follows: Laws changing

the names of persons or places; authorizing the adoption or legitimation of children; granting divorces; creating corporations, or amending, renewing, or extending the charters thereof; granting to any corporation, association, or individual any special or exclusive privilege or immunity, or to any corporation, association, or individual the right to lay down a railroad track. Instances of prohibited legislation, both local and special, may be found in the same section as follows: Laws regulating the affairs of counties, cities, townships, wards, boroughs, or school districts; authorizing the laying out, opening, altering, or maintaining roads, highways, streets, or alleys; vacating roads, town-plats, streets, or alleys; relating to cemeteries, graveyards, or public grounds not of the State; locating or changing county seats, erecting new counties, or changing county lines; incorporating cities, towns, or villages, or changing their charters; erecting new townships or boroughs, changing township lines, borough limits, or school districts; regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes.

"All legislation is necessarily based on a classification of its subjects, and when such classification is fairly made, laws enacted in conformity thereto cannot be properly characterized as either local or special. A law prescribing the mode of incorporating all railroad companies is special, in the narrow sense that it is confined in its operations to one kind of corporations only, and, by the same test, a law providing a single system for organization and government of boroughs in the State would be a local law, but every one conversant with the meaning of those words, when used in that connection, would unhesitatingly pronounce such statutes general laws:" STERRETT, J., Ayars' Appeal, 122 Pa. St. 266.

"The subject of this statute is, therefore, street railway companies, which is a subject for general legislation, while the statute professes to deal only with a limited number of these railways, and these are selected by reference to their location in certain cities. Under the guise of a general law we have here one which is special, because it relates to a few members

of the general class of corporations known as street railway companies, and local because its operations are confined to particular localities, viz., cities of the second and third class:" WILLIAMS, J., Weinman v. Passenger Railway Company, 118 Pa. St. 192.

"We have repeatedly held that the power to classify being conceded, the conclusion that an Act passed for a class was not a local law within the prohibition of the Constitution was irresistible. It may not be a general law in the same sense that one applicable to the Commonwealth at large is general; but it is general, in another and strictly legal sense, since it embraces all the members of a class which the Legislature has created, without any violation of the fundamental law, and which is therefore a proper subject for legislation:" Per WILLIAMS, J., Commonwealth v. Macferron, 152 Pa. St. 244.

"An Act of Assembly that relates to a subject within the purposes of classification is a general law, although it may be operative in a very small portion of the territory of the State, if it relates to all the cities of a given class. For example, an Act relating to the lighting of streets in cities of the third class would be a general law for the following reasons: (a) It relates to the exercise of 'corporate powers;' (b) It affects all the cities of a given class in the same manner; (c) It affects the inhabitants and property-owners in such cities, because of their residence and ownership therein, and the circumstances and needs that are peculiar to the class to which their city belongs. But a law that should provide that all applications made by guardians, administrators, and executors for leave to sell the real estate of a decedent for the payment of his debts, in cities of the third class, should be made, not in the court having jurisdiction of the petitioner's accounts, but in the court of quarter sessions would be a local law, and therefore unconstitutional. It would be applicable to the same sub-divisions of territory as the law relating to the lighting of streets, but it would relate to the exercise of no corporate power residing in a city, nor to the duties of any municipal officer, nor to the needs or welfare of citizens of a city of the third class, as distinguished from other citizens of the Commonwealth. On the other hand, it would affect the jurisdiction of the State courts, modify the duties of public officers whose functions are not local, but general, and touch the inhabitants of cities of the given class in the

exercise and enjoyment of their rights as citizens of the State, not as dwellers in the municipality:" Per WILLIAMS, J., Wyoming Street, 137 Pa. St. 494.

"It was not, then, a general Act, applicable to every part of the Commonwealth. It did apply to a great number of counties, but there is no dividing line between a local and a general statute. It must be either the one or the other. If it apply to the whole State it is general. If to a part only, it is local. As a legal principle it is as effectually local when it applies to sixty-five counties out of the sixty-seven, as if it applied to one county only. The exclusion of a single county from the operation of the Act makes it local:" Per MERCUR, J., Davis v. Clark, 106 Pa. St. 377.

"The Act in question is clearly local; it applies to the township of Ayr only. It gives no power or authority to the officials of any other township or district. The exercise of all power thereby given is restricted within the bounds of the one school district. It is also special. The tax was to be levied and collected for one specific purpose; that purpose was to pay a certain sum of money to the persons named in the Act. The money could not be used for any other or different purpose:" Per MERCUR,, J., Montgomery v. Commonwealth, 91 Pa. St. 125.

3. THE CONSTITUTIONAL PROVISIONS ARE TO BE SO CONSTRUED AS TO PREVENT THE MISCHIEF DESIGNED TO BE REMEDIED BY THEIR ADOPTION.

In Ayars' Appeal,[1] Mr. Justice STERRETT said: "During the session of the Legislature immediately preceding the adoption of the present Constitution, nearly one hundred and fifty local or special laws were enacted for the city of Philadelphia, more than one-third that number for the city of Pittsburg, and for other municipal divisions of the State, about the same proportion. This was by no means exceptional. The pernicious system of special legislation, practiced for many years before, had become so general and deep-rooted and the evils resulting therefrom so alarming that the people of the Commonwealth determined to apply the only remedy that promised any hope of relief. Doubtless, it

was a proper appreciation of the magnitude of these evils as much as anything else that called into existence the convention that framed the present Constitution, and induced its adoption by an overwhelming vote. One of the manifest objects of that instrument was to eradicate that species of legislation, and substitute, in lieu of it, general laws whenever it was possible to do so. This is so clearly apparent that no unbiased mind can contemplate the seventh section of Article III, and kindred provisions, without reaching that conclusion. That section contains a schedule of nearly fifty prolific subjects of previous special and local legislation, and ordains that 'The General Assembly shall not pass any local or special law,' relating to either of them. As an additional safeguard in cases where special legislation is not expressly prohibited, the next section declares 'No local or special bill shall be passed unless notice of the intention to apply therefor shall have been published,' etc."

This point is further illustrated by the remarks of Mr. Justice PAXSON in the case of Morrison v. Bachert:[2] "Prior to the adoption of the present Constitution there was hardly an approach to uniformity in the fees of public officers throughout the State. Local Acts had been procured for many of the counties, in some instances through the influence of the officers themselves, fixing the fees more in harmony with their own greed than the interests of the people, who may fairly be presumed to have known nothing of it until they came to pay the fees. It was to cut this system up, root and branch, with other evils of like nature, that the clause in question was inserted in the Constitution. It was a wise provision, and will be sternly enforced. It is our purpose to adhere rigidly to that instrument that the people may not be deprived of its benefits. It ought to be unnecessary for this court to make this judicial declaration, but it is proper to do so, in view of the amount of legislation which is periodically placed upon the statute-book in entire disregard of the fundamental law. Much of

this legislation may remain unchallenged for years, only to be overturned when it reaches this court. In the meantime, parties may have acted upon it, rights may have grown up, and the inconveniences and losses entailed thereby may not be inconsiderable. As we view it, this note of warning at this time is needed."

It is further illustrated by the remarks of Mr. Justice GREEN, in Appeal of the City of Scranton School District:[3] "It is the duty of the court to enforce the Constitution as they find it. Attempts in covert modes to defeat its plain provisions must be set aside with the same certainty as when the methods are open. Even if the intention be innocent and yet the legislation comes within the constitutional prohibition it must not be tolerated."

In Ayars' Appeal (*supra*), it was further remarked by the learned justice: "The purpose of the provision under consideration was not to limit legislation, but merely to prohibit doing, by local or special laws, that which can be accomplished by general laws. It relates not to the substance, but to the method of legislation, and imperatively demands the enactment of general instead of local or special laws, whenever the former are at all practicable."

In harmony with the foregoing is the construction placed upon the word "affairs" in the second clause of Section 7, of Article III. Thus, in Morrison v. Bachert (*supra*), Mr. Justice PAXSON said: "It was held by the learned judge of the court below, however, that an Act regulating the fees of the prothonotary or other county officers was not a law 'regulating the affairs of counties,' and he defines the 'affairs of counties' to be such 'as concern counties in their governmental and corporate capacity.' This will not do. It is too narrow a construction of the Constitution. That instrument was intended for the benefit of the people, and must receive a liberal construction. 'A constitution is not to receive a technical construction, like a common-law instrument or statute. It is to be interpreted so as to carry out the great principles

of government, and not to defeat them:' Commonwealth v. Clark, 7 W. & S. 127. When it speaks of the affairs of a county, it means such affairs as affect the people of that county. The prothonotary is a county officer, while his fees, when received by him, are his private property, they are paid by the people of the county, not indeed assessed upon all the taxpayers as a salary would be, but upon all citizens who have business with the office or litigation in the courts. As every citizen of the county may be affected by such an Act, and most of them surely will be, how can we say that it concerns no one but the officer entitled to the fees?

"The word 'affairs' is one of broad signification, and the convention used it understandingly. Mr. Buckalew, who was a prominent member of that body, thus refers to the subject in his very excellent work on the Constitution, at page 72: 'In the Pennsylvania provision the word "affairs" is the important one to be examined. It was obviously borrowed from the Constitutions which were, in 1873, of most recent formation, in which it was made to supply the word "business," found in the earlier Constitutions above mentioned. The substitution of a French for a Saxon word—"affairs" for "business"—was probably made in consequence of judicial opinions which had assigned a somewhat restricted effect to the word business, as found in the earlier Constitutions, and was intended to give to the prohibition upon local legislation a more extended application.' "

In Montgomery v. Commonwealth,[4] wherein was in question an Act for the relief of individuals who had advanced moneys in commutation for men drafted into the military service to fill the quota of the township, and who had not been fully reimbursed therefor, by providing money to pay the deficiencies, to be raised from taxpayers of the township, it was said by Mr. Justice MERCUR: "It is contended that this Act of Assembly does not profess 'to regulate the affairs' of the township or school district. Affair is well defined to be business, something to be transacted, matter, concern.

Public affairs are matters relating to government. It is clear that the Act does profess to deal with the affairs of the district. It imposes this specific business on the district, which it was not chargeable with before. It gives to the collector of this tax authority to pay over to persons to whom he could not pay before. It imposes taxes on the people which they were not legally chargeable with before. It is then a matter which concerns every person in the district, who was thereby made subject to this additional taxation. One of the highest attributes of governmental power is thereby applied to them. Their property is to be taken from them and given to others. It does then relate to the public affairs of the district. It seeks to regulate them by designating the manner in which, and the persons by whom, these affairs shall be conducted. It gives relief where no legal remedy existed before, and directs and regulates the action of the officers of the district. Thus it is a special Act for a special purpose to regulate the affairs of the school district, and is in clear violation of Article III, Section 7, of the Constitution. As this is decisive of the case it is unnecessary to consider whether the Act is in conflict with Article IX, Section 1, which declares all taxes shall be levied and collected under general laws."

[1]Ayars' Appeal, 122 Pa. St. 266.

[2]Morrison v. Bachert, 112 Pa. St. 322; and see City of Scranton v. Silkman, 113 Pa. St. 191.

[3]Scranton School District's Appeal, 113 Pa. St. 176.

[4]Montgomery v. Commonwealth, 91 Pa. St. 125.

In Scranton v. Silkman (*supra*), in which the judgment was reversed, his Honor, Judge HAND, in the court below, attempted to distinguish matters of taxation from other matters purely local. He said: "The matter of taxation, in all its branches, is pre-eminently a State affair. The power is a sovereign power. The subject-matter of assessment, the levying and collection of taxes is wholly within the power of the State. It is the internal administration and manage-

ment of counties, cities, townships, wards, boroughs, or school districts that is aimed at in the regulation of those affairs, not the sovereign power and regulation of taxation with all its vital governmental concomitants."

"Constitutions are popular as well as legal instruments, and are to be judged in full view of the facts which attend their formation, and with reference to the announced objects of those who made them. Especially in considering those parts of the Constitution, which, like the seventh section of the third article, consist of general propositions in very condensed form, and consequently without the qualifications and explanations which they require, we are to avoid the mischief of sticking fast in technical construction and losing grasp upon the true meaning of the matter before us. And we are to remember also that the numerous and stringent provisions of this seventh section, detracting as they do largely from the powers of government, are not to be strained beyond their obvious or necessary meaning. Exceptions from the general grant of legislative power must be expressed with distinctness or be clearly implied. They are not to be carried beyond the proper import of the words used, nor, where they admit of more than one meaning, are they to be taken in a sense which shall defeat or impair any power which apparently the convention intended to preserve:" Buckalew on the Constitution, 99.

In speaking of the classification of cities, Mr. Justice PAXSON said: "If the classification of cities is in violation of the Constitution, it follows, of necessity, that Philadelphia, as a city of the first class, must be denied the legislation necessary to its present prosperity and future development, or that the small inland cities must be burdened with legislation wholly unsuited to their needs. For if the Constitution means what the complainants aver that it does, Philadelphia can have no legislation that is not common to all other cities of the State. And for this there is absolutely no remedy but a change in the organic law itself.

"This is a serious question. We have but to turn to the statute-book to realize the vast amount of legislation in the past, special to the city of Philadelphia. We speak not now of what is popularly known as special legislation, private Acts, etc., but of proper legislation, affecting the whole city, and indispensable to its prosperity. We may instance the laws in regard to the quarantine, lazaretto, board of

health, and other matters connected with the sanitary condition of the city, the laws in regard to shipping and pilotage as affecting its commerce, laws concerning its trade, such as those that relate to mercantile appraisers, inspectors of flour, bark, beef and pork, butter and lard, domestic distilled spirits, flaxseed, leather, tobacco, petroleum, and the laws in regard to building inspectors, the storage and sale of gunpowder, laws affecting its political condition, as by the division and subdivision of wards, and the establishing of ratio of representation in councils. We have but to glance at this legislation to see that the most of it is wholly unsuited to small inland cities, and that to inflict it upon them would be little short of a calamity. Must the city of Scranton, over 100 miles from tide-water, with a stream hardly large enough to float a batteau, be subjected to quarantine regulations, and have its lazaretto? Must the legislation for a great commercial and manufacturing city, with a population approaching 1,000,000, be regulated by the wants or necessities of an inland city of 10,000 inhabitants? If the Constitution answers this question affirmatively, we are bound by it, however much we might question its wisdom. But no such construction is to be gathered from its terms, and we will not presume that the framers of that instrument, or the people who ratified it, intended that the machinery of their State government should be so bolted and riveted down by the fundamental law as to be unable to move and perform its necessary functions:" Wheeler v. Philadelphia, 77 Pa. St. 338-350.

4. The Provisions as to Local and Special Legislation Apply Only to the General Assembly.

The constitutional limitations relating to local and special legislation govern the General Assembly; they are not limitations upon the legislative power of a municipality. A municipal ordinance is not a law within the meaning of the Constitution when that term is used with reference to the subject under consideration. In Klingler v. Bickel,[1] there was in question the validity of a borough ordinance, prohibiting the erection of wooden buildings within certain prescribed limits, enacted under the provisions of the Act of June 3d, 1885, P. L. 55. The court below held that the ordinance was

invalid because it prohibited the erection of such buildings in only a portion of the borough, that under the provision of the Constitution prohibiting special or local legislation it was beyond the power of the council as it was beyond the power of the Legislature to legislate for only a portion of the borough.

Said Mr. Justice PAXSON: "Granted the constitutional prohibition and that under it the Legislature may not pass any law 'regulating the affairs of counties, townships, wards, boroughs, or school districts,' it by no means follows that when the Legislature by a general law confers upon a borough the power of regulating its local affairs it may not do so by ordinances that are special in their character. The object of the constitutional provision was clearly to prevent the Legislature from interfering in local affairs by means of special legislation, and, if the town councils of cities and boroughs cannot regulate them, they are in a bad way indeed. The principle contended for would prevent the town councils of a city or borough from passing an ordinance to pave one street, unless it also provided for the paving of all the other streets within the limits of the municipality. In Baldwin v. The City of Philadelphia, 99 Pa. St. 164, it was decided that an ordinance of the city was not a 'law' within the meaning of that clause of the Constitution which declares that 'no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment.' The reasoning of that case applies equally to that section of the Constitution prohibiting special legislation."

The declaration of Article IX, Section 1, is more comprehensive; it is that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

[1]Klingler v. Bickel, 117 Pa. St. 326; and see Norristown v. Citizens' Passenger Railway Company, 148 Pa. St. 87; s. c., below, 9 C. C. R. 102; McCormick v. Fayette County, 150 Pa. St. 191.

5. A Law is General Which Contains an Exception Rendering it Apparently Special, if the Exception be Made Pursuant to a Special Constitutional Provision.

The Act of July 7th, 1879, P. L. 194, enlarging the civil jurisdiction of justices of the peace to three hundred dollars is not rendered local or special by the exclusion of cities of the first class from its operation if in this Act the term "cities of the first class" refers only to the city of Philadelphia, as in that city the office of alderman is abolished and magistrates provided for whose civil jurisdiction is limited by the Constitution (Article V, Section 11) to one hundred dollars; "were it not for this provision it would be impossible to hold that the exception means only Philadelphia," and the Act would therefore be local.[1]

This rule is not applicable, however, where the exception has reference to a special pre-existing statutory provision. The Act of May 24th, 1878, P. L. 133, was entitled "A supplement to an Act approved April 20th, 1876, entitled 'An Act authorizing appeals from assessments in this Commonwealth to the court of common pleas,' and limiting taxation without the approval of the court of quarter sessions, until the next triennial assessment, where the county valuation has been raised to exceed three hundred and fifty per cent." The first section of this Act limited its effect to counties of less than five hundred thousand inhabitants. This Act was held invalid.[2] In this case Mr. Justice Green said: "There is no doubt much force in the consideration that the only county which is now excluded has a system of appeal of its own, and the present law practically makes the right general which was before local. But the difficulty we experience is that we cannot consistently hold a principle of construction applicable in one case and not applicable to another where the same conditions exist. It is, perhaps, unfortunate that we are obliged to apply the doctrine of Davis v. Clark to the present case, because we thereby deprive a large class of

citizens of a valuable privilege. But the remedy is with the Legislature and not with us. It is far better that the law-making power should itself correct the mischief by a new and proper enactment than that the judicial department of the government should pursue a shifting, tortuous policy by executing a rule of construction in one case and refusing it in another when the circumstances of the two are the same."

[1]Wilkes-Barre v. Myers, 113 Pa. St. 395; s. p., Wissler v. Becker, 2 C. C. R. 103; Johnson v. Beacham, 2 C. C. R. 108.

[2]Scranton v. Silkman, 113 Pa. St. 191.

The Act of April 20th, 1876, P. L. 44, entitled "An Act authorizing appeals from assessments in this Commonwealth to the court of common pleas," provided that remedy in favor of any owner of real estate in counties of less than five hundred thousand inhabitants, in cases of decision by the county commissioners. The Act of May 24th, 1878, P. L. 133, supplementary to the foregoing included the like remedy in cases of decision in any city of the third class.

The objection was made in the foregoing case by plea to the jurisdiction grounded on the invalidity of the Act of 1878. It was admitted that the Act of March 18th, 1875, P. L. 15, had been accepted by the cities of the Commonwealth except Lancaster, Allegheny, and Wilkes-Barre, prior to 1878.

The opinion of his Honor, Judge HAND, affirmed the validity of the Acts in question for reasons, among others, which may be summarized as follows: 1. A classification was made, based on population, which had been recognized as proper, and which was in fact justified, operating as it did to leave Philadelphia in a class by itself. 2. The Act of 1876 and its supplement made that general which was before special, because Philadelphia had a similar provision for appeals. 3. It was not local nor special for that reason, and because taxation was an incident of sovereignty, an affair of State, and cities and counties were mere instrumentalities. The constitutional provision intends only such affairs as are peculiar to and belong to the internal management of the different subordinate political divisions of the State. 4. The supplement is valid because it applies to all cities of the third class. 5. The remedy is given to all owners of real estate in the Commonwealth. It is not confined to resident owners.

6. A Law is General Though its Operation May be Impeded by Pre-existing Special Laws, and Hence Such Laws May be Saved by Exception.

It may be stated as a general rule, subject to the exception that certain provisions may be construed as self-efficient, that the Constitution of 1874 operated prospectively, and that it did not affect pre-existing legislation, either general, local, or special.[1]

In the case of Lehigh Iron Company v. Lower Macungie Township (*supra*), the question was whether a special Act of February 25th, 1870, which authorized a township to collect a tax from owners of ore beds for "every ton of ore mined and carried away with teams" over the roads in the township was abrogated by Article IX, Section 1, of the Constitution, which declares that all taxes shall be uniform upon the same class of subjects and shall be levied under general laws. It was held that the provision of the Constitution in question was not operative upon pre-existing local legislation.

In this case Chief Justice Agnew said: "The only question now before us is, therefore, upon the effect of the first section of the ninth article of the new Constitution upon such legislation. It is contended that this section is a repeal, *per se*, of the Act under which this tax is sought to be levied and collected. It is a question of very great concern to the whole State, for if the position taken by the plaintiff in error be true, some of the most important laws of the State have fallen long since, and all acts done under them have been unlawful and void. An example may be found in the Act known as the Venango County Tax Law, enacted many years ago, and extended from time to time to other counties, until now it is the law of probably one-third of the counties in the State. This is the law which makes the treasurer of the county the collector of the State and county taxes, sends him out into the different townships to receive from the people, and requires him to place all uncollected taxes, on the first day of September, in the hands of the several constables for

collection, with an addition of five per cent. to the taxes of such person to pay the expense of collection. It allows the taxpayer a reduction of five per cent. for prompt payment before the first of August, and grace by payment of the simple amount between the first of August and the first of September. The constables give bond and sureties for collection. This is undoubtedly the cheapest and best system of collection in the State, but it is unquestionably special. Many other laws for particular localities might be mentioned.

"In view of the wide and extended effects of an immediate repeal, *ipso facto*, by the adoption of the new Constitution, it behooves us to be careful in the interpretation of the sections mentioned. Upon all the consideration we can give to this subject, after a very careful argument to assist us, we are of opinion that Section 1, of Article IX, is not immediately operative, but was intended by the convention to be mandatory upon the Legislature to enact laws framed upon its special intent, and to repeal all laws inconsistent therewith, leaving the Legislature, in the exercise of a sound and wise discretion, to time the repeal after proper general laws shall have been passed. Any other interpretation would lead to most ruinous results. So much may be deduced from a comprehensive view of the section itself and its consequences, in the absence of any language in it to evidence an intent to make it a repeal *per se*. But beyond this there is strong evidence in the immediate context that the convention had a different intention. A part of Section 1 is the declaration, by way of exception to its generality, of the power of the Assembly to exempt certain classes of property from taxation. This is followed immediately by Section 2, which provides that 'all laws exempting property from taxation other than the property above enumerated, shall be void.' Thus the subject of repeal was directly before the mind of the convention, and was limited to laws relating to exemption only. The subject of the second section, being directly connected with the subject of the first, indeed might have been incorporated

with it, and this subject being that of *repeal*, it is conclusive evidence to our minds that the convention did not intend to repeal special tax laws, but to let them stand until the Legislature had enacted a proper general system of taxation to take their places. The eminent men who composed that body could not fail to perceive the utter confusion into which the State would have been thrown by a repeal *per se*.

"These views derive confirmation from other portions of the instrument. The exception in the seventh section of the third article, relative to legislation, giving power to *repeal special and local Acts*, strongly indicates the intent that such local and special Acts should remain until legislation had been adopted to harmonize these local and special provisions with the general laws so adopted. There are also instances of immediate repeal of existing laws, for example, Article III, Section 21, relating to damages for personal injuries, and Section 22, relating to investments by executors, etc. Article XVI, Section 1, relating to certain existing charters of incorporation, and the section relating to exemption laws, already alluded to (Section 2, Article IX). Then we have the second and thirty-first sections of the schedule bearing directly upon the question. The former continues in force all laws not inconsistent with the Constitution, and all rights, actions, prosecutions, and contracts. This express provision must have its due operation, unless inconsistency plainly appears. The other makes it the duty of the Legislature at its first session, or *as soon as may be*, to pass such laws as may be necessary to carry the Constitution *into full force and effect*. This section also necessarily appeals to the conscience of the members, by their oath of office, to perform this necessary duty, and to bring the laws of the State into perfect accord with the Constitution, which is the highest evidence of the will of the people. With the Legislature, therefore, this duty remains to provide general laws for uniform taxation, and to harmonize all parts of the State by repealing local and

special provisions that stand out upon the body politic as incongruous excrescences."

The Act of June 25th, 1885, P. L. 187, entitled "An Act relating to the collection of taxes in the several boroughs and townships of this Commonwealth," does not violate Article III, Section 7, of the Constitution, relating to local and special legislation, nor Article IX, Section 1, requiring uniformity in the levy and collection of taxes.[2] The last section of the Act of 1885 concluded thus: "This Act shall not apply to any taxes, the collection of which is regulated by a local law." Said Mr. Justice CLARK, in Evans v. Phillipi,[3] wherein the validity of this Act was in question: "The single question then is whether or not a statute, although general in form, is to be treated as a local one simply because of the intervention of some local statute unrepealed, which prevents it from taking general effect. There is an obvious distinction between a statute which upon its face is local and special, and one which although general in form is thus obstructed in its application; in the one case the local law cannot become general, except by a re-enactment in general form, whilst in the other by the repeal of the local law the special subject affected by it is brought under the general law, the operation of which was previously obstructed."

The Act of May 13th, 1887, P. L. 108, known as the "Brooks High License Law," provides in the nineteenth section that none of its provisions "shall be held to authorize the sale of any spirituous, vinous, malt, or brewed liquors, or any admixture thereof, in any city, county, borough, or township, having special prohibitory laws." The purpose of this was to avoid any doubt as to the intention of the Legislature to leave intact special prohibitory laws enacted prior to the adoption of the present Constitution. The provision did not render the statute a local statute.[4]

The Act of May 18th, 1889, P L. 129, entitled "Fixing the number of road and bridge viewers," contained a provision that "this Act shall not apply to counties having local Acts inconsistent herewith." The Act was sustained.[5]

[1]Lehigh Iron Company v. Lower Macungie Township, 81 Pa. St. 482; and see Hays v. Commonwealth, 82 Pa. St. 518; Ahl v. Rhoads, 84 Pa. St. 319; Indiana County v. Agricultural Society, 85 Pa. St. 357; Perot's Appeal, 86 Pa. St. 335; Allegheny County v. Gibson, 90 Pa. St. 397; Philadelphia v. Wright, 100 Pa. St. 235; Pierce v. Commonwealth, 104 Pa. St. 150; Commonwealth v. Handley, 106 Pa. St. 245; Cahill's Petition, 110 Pa. St. 167; Beaumont v. Wilkes-Barre, 142 Pa. St. 198.

[2]Commonwealth v. Lyter, 162 Pa. St. 50.

[3]Evans v. Phillipi, 117 Pa. St. 226; and see Bennett v. Hunt, 148 Pa. St. 257; Commonwealth v. Lyter, 162 Pa. St. 50.

[4]Commonwealth v. Sellers, 130 Pa. St. 32; and see Commonwealth v. McCandless, 4 C. C. R. 119; Affirmed 10 Cent. Rep. 758; s. c., 21 W. N. C. 162; Commonwealth v. Haag, 6 C. C. R. 118.

[5]Road in Cheltenham Township, 140 Pa. St. 136; s. c., 7 Montgomery County Rep. 42; and see Sewer Street, 8 C. C. R. 226.

For cases relating to the Act of June 25th, 1885, P. L. 187, the validity of which was sustained in Evans v. Phillipi (*supra*), see Evans v. Wittmer, 2 C. C. R. 612, 4 Lanc. Law. Rev. 105, in which the Act was held invalid; Keim v. Devitt, 3 C. C. R. 250, in which the Act was held valid; Hannick's Bond, 3 C. C. R. 254; s. c., Collector's Bond, 4 Lanc. Law Review, 166, in which the Act was held invalid; Commonwealth v. Commissioners, 7 C. C. R. 173, in which the Act was held invalid; Commonwealth v. Swab, 8 C. C. R. 111, in which the Act was said to be invalid in so far as it regulated the collection of State and county taxes, but valid in so far as it related to such taxes as were local within each borough or township not included in State or county taxes. In Commonwealth v. Frutchey, 1 P. D. R. 153, 11 C. C. R. 112, the validity of this Act was sustained as not in conflict with Article III, Section 7, nor Article IX, Section 1; and see Swatara Twp. School District's Appeal, 1 Super. Ct. 502.

The distinction between a general statute containing a saving clause excepting local and special laws, and a statute

excluding cities or counties where local or special statutory provisions on the same subject happen to exist, is obvious. In the former case the exception is unnecessary, under the rule that a general statute will not repeal a pre-existing special statute on the same subject, and a direct repeal of the special statute will *ipso facto* extend the operation of the general law to the locality formerly governed by the special statute. In the latter case the statute is invalid on its face, being expressly local, its generality is sought to be helped out by enactments *dehors* the statute itself, and a repeal of these enactments would not extend the statute to the excepted places, for the exclusion is permanent and express.

A law is general which is applicable to all cases except those pending at the time of its passage. The exclusion of all retroactive force does not detract from its general character: Land Company v. Weidner, 169 Pa. St. 359.

As to the rule of construction applied in cases where the Legislature, in execution of the duty imposed by the Constitution, enacts general laws, and as to their effect upon pre-existing local legislation, see Chapter II, Section 16, Questions of Repeal.

7. A Law May be General as to a Class of Persons, and Therefore Valid, Although Special or Local as to its Subject-matter.

The Act of March 18th, 1875, P. L. 24, made it lawful for any married woman owning any of the loans of this Commonwealth or of the city of Philadelphia, or any of the loans, or share or shares of the capital stock of any corporation created by or under the laws of this Commonwealth, to sell and transfer the same, with like effect as if she were not married. This Act, so far as it relates to loans of the city of Philadelphia, is not a regulation of the affairs of that city within the meaning of Article III, Section 7, of the Constitution. It is a general law enlarging the powers of married women so as to regulate the mode of transfer of certain kinds of property owing their existence to Pennsylvania law, and having their legal *situs* in this Commonwealth. Being a regulation of property made for the public safety and convenience in the transaction

of business, it is applicable to all owners of the classes of property named, though it may thus accidentally enlarge the powers of some foreign or non-resident wives.[1]

[1]Loftus v. Farmers' & Mechanics' National Bank, 133 Pa. St. 97; s. c., below, 46 Leg. Int. 46, s. c., 25 W. N. C. 459.

In this case it was argued that the words "or of the city of Philadelphia" might be stricken out without impairing the statute, because without them it would still apply to the loans of all corporations of every kind. The case involved other questions of some difficulty, and that upon the validity of the Act of March 18th, 1875, does not seem by the report to have been fully argued.

In Scranton v. Silkman, 113 Pa. St. 191, his Honor, Judge HAND, in the court below, suggested, among other reasons for sustaining the Acts of 1876 and 1878 allowing appeals from assessments in cities of the third class and in counties of less than 500,000 inhabitants, that as the remedy was given to all owners of real estate within the Commonwealth, and was not confined to residents of the proper city or county the Act was general. But these Acts were held invalid.

In Williams v. People, 24 N. Y. 405, there is a *dictum* that an Act making theft from the person of property under $25 in value grand larceny if committed in the city of New York was general, as it concerned every one who might go to that city, and in fact it was probably intended rather for the protection of unsophisticated strangers than of the more wide-awake city folk. The principle suggested has been followed in other New York cases, and these hold as general laws extending to all persons doing or omitting to do an act within the territorial limits described in the statutes: Binney Restr. on Local and Special Leg. in the U. S. 36.

8. A GENERAL LAW MAY CONTAIN SPECIAL PROVISIONS NECESSARY TO RENDER IT EFFECTIVE.

The fact that the Act of June 14th, 1887, P. L. 395, fixed certain dates for the doing of things necessary to put the city government in operation, compliance with which direction was possible only in the city of Pittsburg, the then sole city of its class, and made no corresponding provision for

cities afterward coming into it, did not render the Act invalid as a local law.[1] In this case Mr. Justice WILLIAMS said: "It is urged that Sections 1, 2, 10, and 20 make the Act local by fixing dates at which acts necessary to put the government in operation are to be done, which were possible only to one city, the city of Pittsburg, and which are impossible to the city of Allegheny, which has come into the class since the Act was passed. The reply to this objection is that, at the date when the Act became a law, there was but one city in the second class. If there had been several such cities the terms employed would have been applied to all alike. It was necessary, in order to give effect in the change of the system of municipal government, that a definite time should be fixed upon at which the change should take place and the new system be put in operation. The trouble with the Act is not that it made such a provision for cities then entitled to a place in the second class, but that it did not also make similar provisions for cities that should thereafter be entitled to come into the class. We cannot hold, however, that the failure to provide a date for the organization of cities afterwards to come into the class, deprives such cities of the benefit of the law, or renders it local, and so inoperative in the cities to which it would otherwise be applicable. It may be that dates following the proclamation of the Governor showing a given city to be entitled to become a city of the second class, corresponding with the dates following the passage of the Act which were fixed for the cities then in the class would be properly adopted. Something like this was done in Shurley v. Railroad Company, 121 Pa. St. 511. But if this should be thought inadmissible and further legislation should be resorted to we do not see that the conclusion of the appellants would follow. The Act of 1887 is general in terms, and it is clearly applicable to all the members of the class as it was then composed, and answered the test laid down in Weinman v. Railway Company, 118 Pa. St. 192, and kindred cases."

[1] Pittsburg's Petition, 138 Pa. St. 401.

The Act in question in this case was entitled "An Act in relation to the government of cities of the second class." The first section provided that on and after April 1st, 1888, the councils should be constituted in a certain manner; the second provided that at the February election of 1889 the members of select council should be classified as to length of term of service, and made other provisions for the years 1890 and 1892 to carry out the classification; the tenth section provided that before January 1st, 1892, councils by ordinance should provide for the carrying the Act into effect by electing heads of departments, etc., and the twentieth section provided that heads of departments should give security for the faithful discharge of duty prior to February 1st, 1888.

CHAPTER II.

CLASSIFICATION AND MINOR TOPICS.

1. Classification generally.
2. The principle of classification is not as a rule affected by the Constitution.
3. What is a proper classification is generally a judicial question.
4. There can be no classification of cities or counties save by population.
5. Classification of cities, counties, or other subdivisions must be complete in order to justify legislation for a given class of either.
6. Classification must not be pretended, false, evasive, nor excessive.
7. Classification by population must not work exclusion but must be operative from time to time, so as by change of population the subject may pass from class to class.
8. Transition from class to class.
9. Option under classification Acts.
10. Option as related to local and special legislation.
11. Legislation for cities by classes must be confined to municipal matters proper.
12. What are municipal matters proper, and what are not.
13. Acts of Assembly void in part.
14. Validity of things executed under invalid Acts of Assembly.
15. Curative statutes.
16. Questions of repeal.

1. Classification Generally.

It pertains to the province of a general treatise upon constitutional law to state the doctrine relating to the power of the Legislature to enact special or particular statutes in cases not embraced within the specific limitations under discussion, and likewise to state the limitations upon the power to classify subjects of legislation. The general subject is implicated, among others, with the provisions of the Bill of Rights and those of the fourteenth amendment to the Federal Constitution.[1]

It may, however, be remarked generally, that the principle of classification, like many others pertaining to the exercise of governmental power, is incapable of definition. No form of words can state the power, with its limitations, in such manner as to furnish in advance a rule for every case that may arise. Like the police power and the power of taxation, its limitations can be found only in the particular instances where some one or more, out of the many constitutional provisions intended to secure the rights of the citizen and the orderly administration of governmental affairs are touched.

The prohibitions of special, as distinguished from local legislation, include two things: Primarily, or in the first instance, such special or private legislation as was formerly sustained as not violative of other constitutional provisions, *e. g.*, granting divorces, changing the names of persons or places, creating corporations, etc.; secondarily, or cumulatively, such special or private legislation as would not formerly have been sustained because violative of other constitutional provisions. This may be illustrated by the cases cited below and by the decisions relating to the power to classify subjects for purposes of taxation. It is true the Constitution recognizes the power to classify in immediate connection with the requirement that taxes shall be levied and collected under general laws, but this tends only to illustrate more clearly what is here attempted to be pointed out, to wit, that as to matters within the latter branch of the distinction the effect of other

constitutional provisions must be determined before the added prohibitions contained in the particular clauses treated can be applied.

For the present purpose it has been deemed sufficient to consider the principle of classification so far as it has been involved in cases arising under the present Constitution in connection with the particular constitutional provisions under consideration.

[1]See Commonwealth v. Zacharias, 181 Pa. St. 126; s. c., 3 Super Ct. 364; Gulf, etc., Railway Company v. Ellis, 165 U. S. 150.

In Commonwealth v. Zacharias (*supra*), the provisions of the Act of June 16th, 1891, P. L. 313, amendatory of the Act of May 24th, 1887, P. L. 190, imposing penalties for engaging in the business of druggist without being registered were in question. The statute included such as opened or carried on the business as manager, and the case was decided upon another point. In the opinion Mr. Justice WILLIAMS said: "The constitutional question raised over the exception in behalf of the widows, administrators, and executors of registered pharmacists is not necessarily involved in this case. The general scope and provisions of the Act of June 16th, 1891, are within a proper exercise of the police power. Their object is the protection of the public health. The requirement that one conducting such a trade should have such chemical and pharmaceutical knowledge as to qualify him to handle intelligently the dangerous commodities in which he deals is reasonable. It can be supported without regard to the exception which is a repeal *pro tanto* of the prohibition which it was the purpose of the statute to make. The exception makes a discrimination between equally unqualified parties, giving to one exception from the operation of a rule enforced against the other. This is not protection to the public, but rank injustice to individuals. There is no reason why the administrator or widow of a pharmacist should be permitted to manage a business of which he or she knows nothing than why any other administrator or widow should be allowed to do so. If the reason of the exception is sympathy for a widow then all widows are *prima facie* equally en-

titled to sympathy and have the same reason to claim exemption from the operation of the law. The exception would seem to fall squarely under the rule laid down in Sayre Borough v. Phillips, 148 Pa. St. 488. It is a discrimination made between those who are equal under the law. It is an arbitrary gift to one, and an arbitrary denial to another, which cannot be upheld. It declares that all widows except the widow of the pharmacist shall be subject to the prohibition of the statute. All administrators and executors except they represent the estate of a deceased registered pharmacist shall be within the prohibition. They must show their qualifications to conduct the trade or retire from it. If, however, the deceased proprietor was competent under the law, his widow, administrator, or executor may conduct the business, no matter how grossly incompetent he or she may be. But this question is not before us in this case."

In Gulf, etc., Railway Company v. Ellis (*supra*), the provision of an Act of the State of Texas giving an attorney's fee of ten dollars in addition to costs of suit in certain cases for the killing of stock against railway companies, was in question. The provision was held invalid. In this case Mr. Justice BREWER said: "The Supreme Court of the State considered this statute as a whole and held it valid, and as such it is presented to us for consideration. Considered as such it is simply a statute imposing a penalty upon railway corporations for a failure to pay certain debts. No individuals are thus punished, and no other corporations. The Act singles out a certain class of debtors and punishes them when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other debtors. They cannot appeal to the courts as other litigants under like conditions and with like protection. If litigation terminates adversely to them, they are mulcted in the attorney's fees of the successful plaintiff; if it terminates in their favor, they recover no attorney's fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms. They must pay attorney's fees if wrong; they do not recover any if right; while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties they are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection. All this is obvious from

a mere inspection of the statute." . . . "But it is said that it is not within the scope of the fourteenth amendment to withhold from States the power of classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true (Hayes v. Missouri, 120 U. S. 68; Railway Company v. Mackey, 127 U. S. 205; Walston v. Nevin, 128 U. S. 578; Bell's Gap Railroad v. Pennsylvania, 134 U. S. 232; Pacific Express Company v. Seibert, 142 U. S. 339; Giozza v. Tiernan, 148 U. S. 657; Columbia Southern Railway v. Wright, 151 U. S. 470; Marchant v. Pennsylvania Railroad, 153 U. S. 380; St. Louis & San Francisco Railway v. Mathews, 165 U. S. 1) yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subjected to the payment of the attorney's fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

"As well said by BLACK, J., in State v. Loomis, 115 Missouri, 307, 314, in which a statute making it a misdemeanor for any corporation engaged in manufacturing or mining to issue in payment of the wages of its employés any order, check, etc., payable otherwise than in lawful money of the United States, unless negotiable and redeemable at its face value in cash or in goods and supplies at the option of the holder at the store or other place of business of the corporation, was held class legislation and void. 'Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations. Thus, the Legislature may fix the age at which persons shall be deemed competent to contract for themselves, but no one will claim that competency to contract can be made to depend upon

stature or color of the hair. Such a classification for such a purpose would be arbitrary and a piece of legislative despotism, and therefore not a law of the land.'

"In Vanzandt v. Waddel, 2 Yerger, 260, 270, CATRON, J. (afterwards Mr. Justice CATRON of this court), speaking for the Supreme Court of Tennessee, declared: 'Every partial or private law, which directly purposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were this otherwise odious individuals and corporate bodies would be governed by one rule, and the mass of the community who made the law by another.'

"In Dibrell v. Morris's Heirs, Supreme Court of Tennessee, 15 S. W. Rep. 87, 95, BAXTER, Special Judge, reviewing at some length cases of classification, closes the review with these words: 'We conclude upon a review of the cases referred to above, that, whether a statute be public or private, general or special, in form, if it attempts to create distinctions and classifications between the citizens of this State, the basis of such classification must be natural and not arbitrary.'

"In Bell's Gap Railroad v. Pennsylvania, 134 U. S. 232, the question was presented as to the power of the State to classify for purposes of taxation, and while it was conceded that a large discretion in these respects was vested in the various Legislatures, the fact of a limit to such discretion was recognized, the court, by Mr. Justice BRADLEY, saying, on page 237: 'All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition.'

"It is, of course, proper that every debtor should pay his debts, and there might be no impropriety in giving to every successful suitor attorney's fees. Such a provision would bear a reasonable relation to the delinquency of the debtor, and would certainly create no inequality of right or protection. But before a distinction can be made between debtors, and one be punished for a failure to pay his debts, while another is permitted to become in like manner delinquent with-

out any punishment, there must be some difference in the obligation to pay, some reason why the duty of payment is more imperative in the one instance than in the other.

"If it be said that this penalty is cast only upon corporations, that to them special privileges are granted, and therefore upon them special burdens may be imposed, it is a sufficient answer to say that the penalty is not imposed upon all corporations. The burden does not go with the privilege. Only railroads of all corporations are selected to bear this penalty. The rule of equality is ignored.

"It may be said that certain corporations are chartered for charitable, educational, or religious purposes, and abundant reason for not visiting them with a penalty for the non-payment of debts is found in the fact that their chartered privileges are not given for pecuniary profit. But the penalty is not imposed upon all business corporations, all chartered for the purpose of private gain. The banking corporations, the manufacturing corporations and others like them are exempt. Further, the penalty is imposed not upon all corporations charged with the *quasi* public duty of transportation, but only upon those charged with a particular form of that duty. So the classification is not based upon any idea of special privileges by way of incorporation, nor of special privileges given thereby for purposes of private gain, nor even of such privileges granted for the discharge of one general class of public duties.

"But if the classification is not based upon the idea of special privileges, can it be sustained upon the basis of the business in which the corporations to be punished are engaged? That such corporations may be classified for some purposes is unquestioned. The business in which they are engaged is of a peculiarly dangerous nature, and the Legislature, in the exercise of its police powers, may justly require many things to be done by them in order to secure life and property. Fencing of railroad tracks, use of safety couplers, and a multitude of other things easily suggest themselves. And any classification for the imposition of such special duties—duties arising out of the peculiar business in which they are engaged—is a just classification, and not one within the prohibition of the fourteenth amendment. Thus it is frequently required that they fence their tracks, and as a penalty for a failure to fence double damages in case of loss are inflicted: Missouri Pacific Railway v. Humes, 115 U. S. 512.

But this and all kindred cases proceed upon the theory of a special duty resting upon railroad corporations by reason of the business in which they are engaged—a duty not resting upon others; a duty which can be enforced by the Legislature in any proper manner, and whether it enforces it by penalties in the way of fines coming to the State, or by double damages to a party injured, is immaterial. It is all done in the exercise of the police power of the State and with a view to enforce just and reasonable police regulations.

"While this action is for stock killed, the recovery of attorney's fees cannot be sustained upon the theory just suggested. There is no fence law in Texas. The Legislature of the State has not deemed it necessary for the protection of life or property to require railroads to fence their tracks, and as no duty is imposed, there can be no penalty for non-performance. Indeed, the statute does not proceed upon any such theory, it is broader in its scope. Its object is to compel the payment of the several classes of debts named, and was so regarded by the Supreme Court of the State.

"But a mere statute to compel the payment of indebtedness does not come within the scope of police regulations. The hazardous business of railroading carries with it no special necessity for the prompt payment of debts. That is a duty resting upon all debtors, and while in certain cases there may be a peculiar obligation which may be enforced by penalties, yet nothing of that kind springs from the mere work of railroad transportation. Statutes have been sustained giving special protection to the claims of laborers and mechanics, but no such idea underlies this legislation. It does not aim to protect the laborer or the mechanic alone, for its benefits are conferred upon every individual in the State, rich or poor, high or low, who has a claim of the character described. It is not a statute for the protection of particular classes of individuals supposed to need protection, but for the punishment of certain corporations on account of their delinquency.

"Neither can it be sustained as a proper means of enforcing the payment of small debts and preventing any unnecessary litigation in respect to them, because it does not impose the penalty in all cases where the amount in controversy is within the limit named in the statute. Indeed, the statute arbitrarily singles out one class of debtors and punishes it for a failure to perform certain duties—duties which are equally

obligatory upon all debtors; a punishment not visited by reason of the failure to comply with any proper police regulations, or for the protection of the laboring classes or to prevent litigation about trifling matters, or in consequence of any special corporate privileges bestowed by the State. Unless the Legislature may arbitrarily select one corporation or one class of corporations, one individual or one class of individuals, and visit a penalty upon them which is not imposed upon others guilty of like delinquency this statute cannot be sustained.

"But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the fourteenth amendment forbids this. No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice MATTHEWS, speaking for this court, in Yick Wo. v. Hopkins, 118 U. S. 356, 369: 'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness.' While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

And see Bill of Rights, Article I, Section 1, of the Constitution: All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness.

A late case upon the subject is that wherein the Act of June 15th, 1897, P. L. 166, known as the Alien Tax Law, was declared invalid by the Circuit Court of the United States: Fraser v. McConway, 6 P. D. R. 555.

2. The Principle of Classification is not, as a Rule, Affected by the Constitution.

The constitutional provisions do not, as a rule, abridge the power of the General Assembly with reference to the classification of subjects and the enactment of laws relating to such classes.[1] The Constitution itself, however, has made a classification of some subjects, and such classification is probably final for the purposes for which it is thus made.[2] The Constitution recognizes the power of classification in Article IX, Section 1,[3] and where a classification is found in the Constitution, laws based on such classification cannot be special or local.[4]

[1]Wheeler v. Philadelphia, 77 Pa. St. 338; Kittanning Coal Company v. Commonwealth, 79 Pa. St. 100; Kitty Roup's Case, 81* Pa. St. 211; Kilgore v. Magee, 85 Pa. St. 401; Commonwealth v. Delaware Div. Canal Company, 123 Pa. St. 594; Kennedy v. Agricultural Insurance Company, 165 Pa. St. 179.

[2]McCarty v. Commonwealth, 110 Pa. St. 243; Morrison v. Bachert, 112 Pa. St. 322.

[3]Ayars' Appeal, 122 Pa. St. 266.

[4]Rymer v. Luzerne County, 142 Pa. St. 108; Reid v. Smoulter, 128 Pa. St. 324; Commonwealth v. Anderson, 178 Pa. St. 171.

In Evans v. Phillippi, 117 Pa. St. 226, Mr. Justice Clark said: "A law is said to be local and special, however, not under the new Constitution, or of any decision under it, but because it falls within the proper definition of a local law both before and since 1874." In Wheeler v. Philadelphia, 77 Pa. St. 338, Mr. Justice Paxson said: "We are aware that it does not follow that because classification is resorted to in

the organic law, the Legislature may exercise the same power. But the power existed at the time of the adoption of the Constitution; it had been exercised by the Legislature from the foundation of the government; it was incident to legislation, and its exercise was necessary to the promotion of the public welfare. The true question is, not whether classification is authorized by the terms of the Constitution, but whether it is expressly prohibited. In no part of that instrument can any such prohibition be found. For the purpose of taxation, real estate may be classified. Thus, timber lands, arable lands, mineral lands, urban and rural, may be divided into distinct classes, and subjected to different rates. In like manner other subjects, trades, occupations, and professions may be classified. And not only things but persons may be so divided. The *genus homo* is a subject within the meaning of the Constitution. Will it be contended that as to this there can be no classification? No laws affecting the personal and property rights of minors as distinguished from adults? Or of males as distinguished from females? Or, in the case of the latter, no distinction between a *feme covert* and a single woman? What becomes of all our legislation in regard to the rights of married women if there can be no classification? and where is the power to provide any future safeguards for their separate estate? These illustrations might be multiplied indefinitely were it necessary."

In Kittanning Coal Company v. Commonwealth (*supra*), Chief Justice AGNEW said: "It is clear, therefore, that the moment we concede the power to classify, we have disposed of the question of uniformity, for then all that is required by the Constitution is uniformity of taxes among members of the class. Now the power to classify is not only retained in clear language, but was held by the court to be continued in the case of Kitty Roup v. The City of Pittsburg. This power was possessed under the Constitution of 1790, had been exercised in numerous laws, and existed when the new Constitution was framed and adopted. Thus, real estate had been classified as seated and unseated, and by various kinds, as houses, lands, lots of ground, ground-rents, mills, manufactories, furnaces, ferries, and others. The classification of personal property was equally various, to wit: slaves, horses, mules, cattle, carriages, watches, bonds, mortgages, stocks, moneys at interest, profits, etc. Some trades, professions, callings, and even single men were taxed by classification. Taxes were

laid in various forms, as rates on values, rates on dividends, or profits, and by specific sums on specified articles. These things were well known to the convention of 1873, yet no change was made in the power to classify, but it was recognized by saying that all taxes shall be uniform on the *same class* of subjects within the territorial limits of the authority levying the tax, by the latter clause, even extending the power to classify by limiting the class to certain bounds. We must conclude, therefore, that a classification of coal mining and purchasing and selling companies is not beyond the legislative power, and the tax being clearly uniform upon their business measured by the extent of it, is not only within the meaning of the Constitution, but is equal and just."

The Constitution furnishes a number of instances recognizing classification or in which legislation must follow a given classification.

Thus, in Section 5, of Article V, whenever a county shall contain 40,000 inhabitants it shall constitute a separate judicial district. In Section 12, Article V, in Philadelphia there shall be established for every 30,000 inhabitants one court not of record for police and civil causes. In Section 27, Article V, in every county wherein the population shall exceed 150,000 the General Assembly shall establish a separate orphans' court. In Section 5, Article XIV, in counties containing over 150,000 inhabitants all county officers shall be paid by salary. In Section 1, Article XV, cities may be chartered whenever a majority of the electors of any town or borough having a population of at least 10,000 shall vote at any general election in favor of the same. In Section 17, Article II, every city entitled to more than four representatives and every county having more than 100,000 shall be divided into districts of compact and contiguous territory, etc. In Article VIII, Section 17, the General Assembly shall by general law designate the courts and judges by whom the several classes of election contests shall be tried. Article IX, Section 1, all taxes shall be uniform upon the same class of subjects.

In McCarty v. Commonwealth (*supra*), Mr. Justice GORDON said: "Moreover as by the Constitution itself, the counties, with reference to the fees of their officers, have been classified, we think a further attempt in that direction not permissible. By this Act (the one in question) the Legislature seems to have undertaken to correct or modify the provisions of the Constitution. That instrument provides that in coun-

ties having a population of over 150,000 their officers shall be salaried, and the attempt is here to simply enlarge this class by adding to it counties exceeding in population 100,000." In another part of the opinion he queried: "Where then is the special necessity for the subdivision of this second class?"

In Rymer v. Luzerne County (*supra*), the Act of March 31st, 1876, P. L. 17, regulating the compensation of county officers in counties having over 150,000 was in question. As to this Act the court remarked: "The Act of 1876 is neither a local nor a special law, for the reason that it applies to all counties of a certain class, and that class created by the Constitution itself."

It will be observed the Act of 1876 classified counties of over 150,000 and fixed a different scale of salaries for each class.

The Act of May 6th, 1874, P. L. 125, relating to the compensation of clerks of the orphans' court, registers of wills, recorders of deeds, etc., does not violate Article IX of the Constitution providing for uniformity of taxation, or Article III, Section 7, forbidding the Legislature to pass "any local or special law regulating the affairs of counties." The Act requires that clerks of the orphans' court, registers of wills, recorders of deeds, etc., "of this Commonwealth shall pay into the treasury for the use of the Commonwealth, after deducting all necessary clerk hire and office expenses, fifty per centum on the amount of any excess over and above the sum of $2,000, which shall be found by the auditor appointed by the court to settle accounts of county officers to have been received by any office in any one year: Provided, if two or more of said offices shall be held by one person, the auditor-general shall add together the fees received in the offices so held, and shall charge the same percentage on the aggregate amount of fees received by such person holding more than one of said offices." Held also, that in ascertaining what amount should be paid to the Commonwealth by a person holding two offices only one salary should be deducted from the gross receipts: Commonwealth v. Anderson, 178 Pa. St. 171.

In the foregoing case his Honor, Judge McPherson, in the court below said: "The defendant's argument is that the body of the Act of 1874 repeals all preceding Acts on this subject, because it provides a new system for taxing the fees of

officers in counties having less than 150,000 inhabitants; but that the proviso of the Act is void because it offends against Article IX of the Constitution providing for uniformity of taxation, and against Article III, Section 7, forbidding the Legislature to pass 'any local or special law . . . regulating the affairs of counties. . . .'

"In our opinion this position is unsound throughout. It is not the proviso, however, but the whole Act which the defendant ought to attack, if he desires to insist upon an alleged violation of Article III, Section 7, for it is not the proviso but the body of the Act which confines its scope to counties having a specified population. But whatever may be his point of attack we believe that the Act of 1874 does not offend against Article III, Section 7, because it is not a local or special law. It applies to all the counties of the State containing less than 150,000 inhabitants, and while statutes upon certain other subjects having a similarly restricted scope have been held to be unconstitutional in several cases, which it is not necessary to cite, the Act in question is valid because it is restricted by the Constitution itself to the class or subject with which it deals, and therefore it is not within the reason of these decisions. In effect this was declared in Morrison v. Bachert, 112 Pa. St. 322. The subject of the Act then under consideration was the fees which the citizens of the State should pay in consideration of the services rendered by certain officers. The statute was held to be unconstitutional because it excluded permanently from its provision every county containing more than 150,000 inhabitants; its subject being clearly a county affair upon which local legislation was prohibited. But the court was careful to distinguish between a fee considered as a sum which the citizen is to pay and a fee considered as the sum which the officer is to receive. In the latter aspect the Constitution itself has made a classification which the Legislature is not at liberty to disregard. 'It is further to be observed,' Mr. Justice PAXSON says, on page 330: 'That so far as the compensation to county officers is concerned the Constitution has classified the counties of the State.'

"Moreover the Act of 1874 does not in any respect regulate 'the affairs of counties.' It does not increase or diminish the fees which the officers are to receive—thus affecting the people who pay, as well as the officer who earns, the fees. Leaving the amount of his fees to be determined by

other statutes, the Act of 1874 is concerned simply with the subject of taxation by the State upon the receipts of the office. This treats a fee as the compensation of the officer, and taxes it in his hands as his property. From this point of view his fees are in no sense a county affair. The Act affects the profits of the officer and the receipts of the State treasury, but, except remotely, no other consideration is involved. Therefore, even if the Act is to be regarded as local it is not forbidden by the clause to which we have just referred."

Classification of coal mines as anthracite and bituminous is proper, including a definition of what shall constitute such mines; legislation for each class having relation to the health and safety of persons employed therein is valid: Durkin v. Kingston Coal Company, 171 Pa. St. 193; Commonwealth v. Jones, 4 Super. Ct. 362. In the case last cited his Honor, Judge SMITH, remarked: "Speaking for myself, I regard it important, in considering the constitutional prohibition of 'any local or special law' upon the subjects enumerated in Article III, Section 7, to take into account the provision of Article XVI, Section 3, that 'the exercise of the police power of the State shall never be abridged.'

"It is difficult to regard the latter provision as merely aimed at a legislative abridgment of the police power of the State. The Legislature may forbear or neglect to exercise the police power, but no legislative enactment on the subject can abridge the power of a subsequent Legislature in the premises, and, as this principle exists independent of the constitutional provision, it was unnecessary as a limitation on the power of the Legislature.

"These prohibitive provisions are to be so construed that both shall stand if possible. If the prohibition of local or special legislation includes the exercise of the police power in relation to local or special subjects it is a serious abridgment of that power. The broad and unqualified terms of the section relating to the police power would seem to imply that no abridgment in any manner was intended. Full effect may be given to this section by regarding it as a qualification of the prohibition of local or special legislation, in the nature of a proviso, excepting from that prohibition the exercise of the police power of the State on the subjects embraced in it. Such a construction would harmonize the two constitutional prohibitions and permit an unabridged exercise of the police power on all matters within its scope,

whether general, or local and special, leaving to judicial construction, as heretofore, the character and limitations of that power.

"In this view the Act of 1893, even if local or special in its application, may be sustained as an exercise of the police power of the State for the protection of life, health, and property in the mining operations to which it relates. But it is unnecessary to rule the present case on this construction of these constitutional provisions."

The Act of June 20th, 1883, P. L. 134, requiring foreign insurance companies to appoint a State agent on whom process may be served is not special. Foreign insurance companies licensed to transact business in this State, are essentially a distinct class of corporations justifying and requiring legislation appropriate to the class itself: Kennedy v. Agricultural Insurance Company, 165 Pa. St. 179. And such a classification is proper for purposes of taxation: Germania Insurance Company v. Commonwealth, 85 Pa. St. 513.

3. What is a Proper Classification is Generally a Judicial Question.

Upon this subject it was remarked by Mr. Justice Sterrett in Ayars' Appeal.[1]

"It has also been suggested that the question of necessity for classification and the extent thereof, as well as of what are local or special laws, is a legislative and not a judicial question. The answer to that is obvious. The people, in their wisdom, have seen fit not only to prescribe the form of enacting laws, but also as to certain subjects, the method of legislation, by ordaining that no local or special law relating to those subjects shall be passed. Whether, in any given case, the Legislature has transcended its power and passed a law in conflict with that limitation is essentially a question of law, and must necessarily be decided by the courts. To warrant the conclusion that the people, in ordaining such limitations, intended to invest their law-makers with judicial power, and thus make them final arbitrators of the validity of their own acts, would require the clearest and most em-

phatic language to that effect. No such intention is expressed in the Constitution, and none can be inferred from any of its provisions. That these limitations were designed to establish a fixed and permanent rule cannot be doubted; but, if the ultimate application of that rule were to rest solely in the judgment of the body on which it was intended to operate, nothing could be more flexible."

The foregoing had reference to the classification of cities, sustained upon the ground of necessity, and limited thereby, upon which it was further remarked after referring to certain cases wherein classification of cities had been sustained: "Some of the cases above cited have been quoted at considerable length for the purpose of showing that this court never intended to sanction classification as a pretext for special or local legislation. On the contrary, the underlying principle of all the cases is that classification, with the view of legislating for either class separately, is essentially unconstitutional, unless a necessity therefor exists, a necessity springing from manifest peculiarities, clearly distinguishing those of one class from each of the other classes, and imperatively demanding legislation for each class, separately, that would be useless and detrimental to the others. Laws enacted in pursuance of such classification and for such purposes are, properly speaking, neither local nor special. They are general laws, because they apply alike to all that are similarly situated as to their peculiar necessities."

The different grounds of classification are recognized by Mr. Justice GORDON in McCarty v. Commonwealth,[2] where he said: "It is admitted that classification, even where not specially recognized by nature, custom, the laws of trade, or the Constitution, must, in certain cases, be adopted *ex necessitate*."

In Commonwealth v. Delaware Division Canal Company,[3] Mr. Justice CLARK remarked: "Classification for purposes of taxation, as a general rule is a matter for the Legislature."

The sum of the matter probably is that the subject of classification is legislative in the first instance, that as legislative power is necessarily exercised through a classification of subjects (for a law operating at once and alike upon all subjects is inconceivable), a legislative classification is presumed to be valid and to have been made in the exercise of a wise discretion and for sufficient and proper reasons, unless an infringement of some provision of the State or Federal Constitution appears. Whether there is such infringement is for the court.

[1]Ayars' Appeal, 122 Pa. St. 266.

[2]McCarty v. Commonwealth, 110 Pa. St. 243.

[3]Commonwealth v. Delaware Division Canal Company, 123 Pa. St. 594.

This subject may be further illustrated by the remarks of Mr. Justice CLARK, in the case of Commonwealth v. Delaware Division Canal Company, 123 Pa. St. 594, with reference to the exercise of the taxing power:

"The new Constitution does not withdraw the power of classification from the Legislature (Kitty Roup's Case, 81* Pa. St. 211; Kittanning Coal Company v. Commonwealth, 79 Pa. St. 100); indeed, the power is necessarily implied in the constitutional provision to which the fourth section of the Act of 1885 is supposed to be obnoxious. The power to impose taxes for the support of the government, subject to the limitations of the Constitution, still belongs to the Legislature; the selection of the subjects, their classification, and the methods of collection are purely legislative matters. When the action of the Legislature, with respect to these matters, is not repugnant to the Constitution, it would certainly be a case of the grossest inequality, which would call for the intervention of the courts: Kelly v. City of Pittsburg, 85 Pa. St. 170. It may be conceded, however, that classification should be made according to some reasonable, practical rule, drawn from experience, which would prevent a gross inequality in the burdens of taxation. 'It must,' in the language of Mr. Justice AGNEW, 'visit all alike in a reasonably practicable way, of which the Legislature may judge,

but within the limits of what is taxation. Like the rain, it may fall upon the people in districts and by turns, but still it must be public in its purpose and reasonably just and equal in its distribution, and cannot sacrifice individual right by a palpably unjust exaction. To do so is confiscation, not taxation; extortion, not assessment, and falls within the clearly implied restriction in the Bill of Rights:' Washington Avenue, 69 Pa. St. 352.

"Absolute equality is, of course, unattainable; a mere approximate equality is all that can reasonably be expected. A mere diversity in the methods of assessment and collection, however, if these methods are provided by general laws, violates no rule of right, if when these methods are applied the results are practically uniform. If there is a substantial uniformity, however different the procedure, there is a compliance with the constitutional provisions: Fox's Appeal, 112 Pa. St. 353; even when there be some disparity of results, if uniformity is the purpose of the Legislature, there is a substantial compliance: Hunter's Appeal, 18 W. N. 411, 394; Loughlin's Appeal, 19 W. N. 517. Nor is classification necessarily based upon any essential differences in the nature or, indeed, the condition of the various subjects; it may be based as well upon the want of adaptability to the same methods of taxation, or upon the impracticability of applying to the various subjects the same methods, so as to produce just and reasonably uniform results, or it may be based upon well-grounded considerations of public policy.

"Hence it is that some classes of corporations are taxed upon net earnings, or income; others upon capital stock, the value thereof to be ascertained by their annual dividends, or in a certain event upon the actual value of the shares; others upon their gross receipts; insurance companies upon the gross amount of their premiums; coal and mining companies at a specific sum for every ton of coal mined, etc.

"Real estate, for taxation, has been classified as seated and unseated, and for municipal purposes may, perhaps, admit of further classification: Kitty Roup's Case (*supra*). Collateral inheritances are distinguished from those that are direct, the former being subject to taxation, the latter not. Foreign insurance companies have been distinguished from domestic companies, and taxed independently and differently: Germania Insurance Company v. Commonwealth, 85 Pa. St. 513. So trades, professions, callings, and even single men have

been taxed by classification, and it has been said that professional men may be classified as physicians, lawyers, clergymen, etc.; tradesmen as merchants, mechanics, etc.; and other persons as bankers, manufacturers, etc.; and a uniform tax assessed upon each class: Banger's Appeal, 109 Pa. St. 79. Not only have taxes been laid in all these various forms, rated on values, on dividends or profits, on premiums, on net earnings, and on gross receipts, but also by specific sums on specific articles. The road-bed, station-house, rolling stock, and equipments of a railroad company; the canal-bed, and berm banks, the locks, lock-houses, etc., of a canal company; the banking-house or place of business of a banking company, etc., are withdrawn from the ordinary processes of general taxation and are reached in a tax upon capital stock, which has always been regarded as a tax upon the property and assets. These several classifications and departures from uniformity in methods were intended simply to bring about a just uniformity in results. So places of amusement and the luxuries of life may be taxed in relief of the necessaries. Household and kitchen furniture, gold and silver plate, exceeding a certain value, pleasure carriages, and gold and silver watches, kept for use, prior to the Act of May 13th, 1887, P. L. 114, were selected from the like articles in trade, and from other articles of personal property, and with money at interest, were subjected to a special tax. Illustrations might be multiplied to show that classification does not depend upon differences in the physical nature or condition of the subjects selected, but upon a variety of considerations."

4. There Can be no Classification of Cities or Counties Save by Population.

In Commonwealth v. Patton,[1] Mr. Justice Paxson said: "There can be no proper classification of cities or counties except by population. The moment we resort to geographical distinctions we enter the domain of special legislation, for the reason that such classification operates upon certain cities or counties to the perpetual exclusion of all others."

[1]Commonwealth v. Patton, 88 Pa. St. 258.

5. Classification of Cities, Counties, or Other Sub-divisions, Must be Complete in Order to Justify Legislation for a Given Class of Either.

The Constitution, Article XIV, Section 5, requires the compensation of county officers to be salaries instead of fees, in counties having a population of over 150,000 inhabitants, thus in effect classifying counties for this purpose and making one class of those having over, and another of those having under the specified population.

The Act of June 22d, 1883, P L. 139, undertook to extend the salary system to counties containing over 100,000 and less than 150,000 inhabitants, by provisions similar to those of the Act of March 31st, 1876, P. L. 13, enacted to carry into effect the provisions of Article XIV, Section 5, of the Constitution relating to the compensation of county officers in counties having over 150,000 inhabitants. It was held invalid because among other reasons it related to less than a constitutional class.[1]

A similar Act of June 12th, 1878, P. L. 187, was held invalid which applied to counties having over 10,000 and less than 150,000 inhabitants.[2]

The Act of March 31st, 1876, above mentioned, makes a sub-classification of counties having over 150,000 inhabitants, and provides a different scale of salaries for each sub-class. As shown elsewhere this Act is valid, and the foregoing cases suggest what is not explicitly stated, to wit, that a similar Act relating to all counties having less than 150,000 inhabitants, containing sub-classes with an appropriate scale of salaries for each class, might be valid. But in the two cases cited the classification was not complete. In the last case cited, Mr. Justice Gordon said: "General legislation for all the cities of the Commonwealth as a single class having been regarded as impossible, the Legislature first divided these municipalities into several distinct classes, and then provided laws and regulations adapted to each class. This, as we have

seen, was recognized as legitimate and proper. There is here, however, a new and complete classification, and not a mere cutting out of one or more cities, designated by population, from the general class, and in this the Act of 1874 is distinguished from that of 1883, in which no general classification is attempted, but a special legislation adopted for certain counties selected from all others, and to be ascertained by their populations rather than by their names. Under the rulings in Davis v. Clark, 10 Out. 377; Commonwealth v. Patton, 7 Norris, 260, and Scowden's Appeal, 15 Id. 425, this is not allowable."

[1]McCarty v. Commonwealth, 110 Pa. St. 243.
[2]Morrison v. Bachert, 112 Pa. St. 322.

6. Classification Must not be Pretended, False, Evasive nor Excessive.

The Act of April 18th, 1878, P. L. 29, entitled "An Act to provide for the holding of courts in certain cities of this Commonwealth," enacted "that in all counties of this Commonwealth where there is a population of more than 60,000 inhabitants, and in which there shall be any city incorporated at the time of the passage of this Act with a population exceeding 8,000 inhabitants, situate at a distance from the county seat of more than twenty-seven miles by the usually traveled public road, it shall be the duty of the president judge . . . to make an order providing for the holding of one week of court or more . . for the trial of criminal or civil cases in the said city." This Act was held to be invalid as a local law under a false and pretended classification.[1] In this case Mr. Justice Paxson, after quoting the above, said: "This is classification run mad. Why not say all counties named Crawford, with a population exceeding 60,000, that contain a city called Titusville, with a population of over 8,000, and situated twenty-seven miles from the county seat? Or all counties with a population over 60,000 watered by a

certain river or bounded by a certain mountain? There can be no proper classification of cities or counties except by population. The moment we resort to geographical distinctions we enter the domain of special legislation, for the reason that such classification operates upon certain cities or counties to the perpetual exclusion of all others."

The Act of June 12th, 1879, P. L. 174, entitled "An Act to provide for the holding of courts in certain cities of this Commonwealth," was made applicable in all counties where there is or may hereafter be, a population of not less than 60,000 inhabitants, and in which there is now, or may hereafter be, an incorporated city of the fifth class, subject to the provisions of the Act of May 23d, A. D. one thousand eight hundred and seventy-four, and the supplements thereto, or which may hereafter be incorporated under said Acts. This Act was held to be invalid, and it was pointed out that it was evidently framed to avoid the difficulty encountered by the Act of April 18th, 1878. Said Mr. Justice PAXSON: "It requires but a glance at the Act to see that it is an attempt to evade the Constitution. It is special legislation under the attempted disguise of a general law. Of all forms of special legislation this is the most vicious."[2]

The Act of June 8th, 1891, P. L. 216, entitled "An Act to prevent the pollution of the water of streams supplying cities of this Commonwealth," provided that it should be unlawful to hereafter establish any cemetery upon lands located within one mile from any city of the first class of this Commonwealth, the drainage from which empties or passes into any stream from which the supply of water is obtained. This Act was held to be invalid.[3] Said Mr. Justice WILLIAMS: "It is not alleged by the applicant that this Act is a general law in the primary sense of the words, for it does not apply to the State at large, but it is contended that it is a general law in a secondary or restricted sense because of the classification of cities, and because its provisions relate to cities of the first class. If, however, we look into its provisions, we shall find

that they do not relate to cities of the first class or any other class. They relate distinctly and clearly to a strip of territory lying on the outside of the city of Philadelphia, having a breadth of one mile, and a drainage into any stream from which the water supply of the city is obtained. No municipal power, or duty, or officer is the subject of legislative regulation by this Act, but it lays its hand on cemeteries and forbids their establishment within this narrow strip of territory. Now cemeteries may be more numerous and more necessary in the neighborhood of cities than in the country, but it will hardly be asserted that they are part of the municipal machinery of a city, even when located within its limits. This Act does not undertake, however, to deal with cemeteries within cities of the first class, but with those that are wholly outside of them. It does not attempt to deal with all cemeteries that are outside, but only with those that are within one mile from the city lines. Even this limited territory is subdivided so that in the neighborhood of Philadelphia the law is applicable to those cemeteries lying in the valley of the Schuylkill, but it is not applicable to those in the valley of the Delaware. It would be difficult to imagine a better example of a law both local and special than this."

The Act of June 8th, 1893, P. L. 42, entitled "An Act authorizing the regulating, taking, use, and occupancy of certain public burial places, under certain circumstances, for places of common school education," is invalid.[4] The judgment in this case was affirmed upon the opinion of the court below, in which it was said: "We think the Act of Assembly unconstitutional because it is a local and special Act regulating the affairs of a school district, as well as relating to a graveyard not of the State. Its very title shows that it is special and not general. It is entitled 'An Act authorizing the taking, use, and occupancy of certain public burial grounds, under certain circumstances.' It is well known that this Act of Assembly was prepared and its passage procured for this particular case, to enable this school board to take

this burial ground, and that this was done after a special law avowedly for the same purpose had been vetoed by the Governor. It is special legislation in the guise of a general law—the most specious and vicious form that special legislation can assume. That this particular school district and this particular burial ground were intended to be affected is made manifest by the first section of the Act, in which all words of general operative effect are so hedged in and limited by other words, confining their operation as to render it extremely probable that there is no other graveyard in the Commonwealth within the operation of the Act. Certainly they must be very few in number. The Act would have been little, if any, more apparently special if it had enacted that 'whenever the school board of York City desired to occupy the Potter's Field therein, it should be lawful for them,' etc. Localization and specialization may be produced by matter of description, geographical or otherwise, or by words of limitation confining the operation of general terms to an individualized subject-matter. See Commonwealth v. Patton, 88 Pa. St. 258; Philadelphia v. Cemetery Company, 162 Pa. St. 105; Weinman v. Passenger Railway Company, 118 Pa. St. 192."

Where an Act is general in form, but its provisions are such as to be inoperative, except in a certain city, and in relation to a particular building there, it is local; thus, the Act of May 24th, 1893, P. L. 124, entitled "An Act to abolish commissioners of public buildings, and to place all public buildings heretofore under the control of such commissioners, under the control of the department of public works in cities of the first class," is a local Act, it applies solely to Philadelphia, and to but one particular building in that city, and regulates the affairs of that city by placing in the control of the department of public works a particular building.[5]

The Act of May 24th, 1887, P. L. 204, dividing the cities of the State into seven classes, and providing for the incorporation and government of cities of the fourth, fifth, sixth,

and seventh classes, was held invalid because the attempted classification was unnecessary and excessive. The classification was (VII) under 10,000 (VI), 10,000 to 20,000 (V), 20,000 to 45,000 (IV), 45,000 to 75,000 (III), 75,000 to 150,000 (II), 150,000 to 600,000, and (I) over 600,000.[6] The same cases held the Act of April 11th, 1876, P. L. 20, to be invalid for the same reasons. By this Act, an amendment of the Act of May 23d, 1874, P. L. 230, the number of classes of cities was increased to five.

In Ayars' Appeal, Mr. Justice STERRETT said: "The broad ground on which the court was asked to declare the Act unconstitutional is, that under the specious guise of classification, it is local and special legislation pure and simple, and, without pretense of necessity, opens wide the door for further legislation of the same vicious and inhibited character. It is difficult if not impossible to escape from that position.

Classification is not expressly forbidden by the Constitution. On the contrary, it is distinctly recognized for certain purposes. For example, Article IX, Section 1, declares, "All taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." Thus, by necessary implication, authority is given to classify property for the purpose of taxation, but by express mandate of the last clause above quoted, all taxes must be levied and collected under general and not special or local laws. All legislation is necessarily based on a classification of its subjects, and when such classification is fairly made, laws enacted in conformity thereto cannot be properly characterized as either local or special. A law prescribing the mode of incorporating all railroad companies is special, in the narrow sense that it is confined in its operations to one kind of corporations only, and, by the same test, a law providing a single system for organization and government of boroughs in the State would be a local law, but every one conversant with the meaning of those words, when used in that connection,

would unhesitatingly pronounce such statutes general laws. But, as was said in Scowden's Appeal (*supra*), "classification which is grounded on no necessity and has for its sole object an evasion of the Constitution" is quite a different thing.

"The Act of 1874, dividing the cities of the State into three classes, viz.: those containing over three hundred thousand population, those containing less than three hundred thousand and exceeding one hundred thousand, and those containing less than one hundred thousand and exceeding ten thousand, was sustained, as to such of its provisions as have been involved in adjudicated cases, because it was considered within the spirit if not the letter of the Constitution. As to the number of classes created, that Act appears to have covered the entire ground of classification. It provided for all existing as well as every conceivable prospective necessity. It is impossible to suggest any legislation that has or may hereafter become necessary for any member of either class, that cannot, without detriment to other members of same class, be made applicable to all of them. If classification had stopped where the Act of 1874 left it it would have been well, but it did not. Without the slightest foundation in necessity, the number of classes were soon increased to five, and afterwards to seven, and if the vicious principle on which that was done be recognized by the courts, the number may at any time be further increased until it equals the number of cities in the Commonwealth. The only possible purpose of such classification is evasion of the constitutional limitation, and as such it ought to be unhesitatingly condemned.

"The fact that the extended classification of 1876, and more especially that of 1887, is unnecessary, and therefore unwarranted, is manifest from an inspection of the Acts themselves. With very few and quite unimportant exceptions the charter powers of the fourth to seventh classes, inclusive, under the latter Act, are precisely similar. There is nothing in either of the points of difference that can possibly be regarded as essential. Aside from the improper consideration

that five classes furnish greater facilities for special legislation than one class would do, there is nothing to prevent the last four classes from being included in the third class established by the Act of 1874, which comprises all cities of more than ten and less than one hundred thousand population. Their needs are all so similar that no charter power required for either of them would be unnecessary or detrimental to any of the others. The larger cities of such a class—that is, a class embracing all cities over ten and less than one hundred thousand population—would doubtless require a larger representation in each branch of councils, but that, of course, would be easily regulated by the adoption of a suitable ward and population basis of representation."

[1]Commonwealth v. Patton, 88 Pa. St. 258.

[2]Scowden's Appeal, 96 Pa. St. 422.

[3]Philadelphia v. Westminster Cemetery Company, 162 Pa. St. 105; s. c., 3 P. D. R. 151.

[4]City of York School District's Appeal, 169 Pa. St. 70; s. c. below *sub nom* In re Potter's Field, 8 York, 145.

[5]Perkins v. Philadelphia, 156 Pa. St. 554.

[6]In re Grant Street, 121 Pa. St. 596; Ayars' Appeal, 122 Pa. St. 266; and see Shoemaker v. Harrisburg, 122 Pa. St. 285; Berghaus v. Harrisburg, 122 Pa. St. 289; Klugh v. Harrisburg, 122 Pa. St. 289.

7. Classification by Population Must Not Work Exclusion, but Must be Operative from Time to Time so as by Change of Population the Subject may Pass from Class to Class.

The Act of June 28th, 1879, P. L. 182, extending the provisions of the mechanics' lien law to leasehold estates, contained in the sixth section a proviso that the Act should not apply to counties having a population of over 200,000 inhabitants. The Act was held to be local because certain counties were excluded by the proviso.[1] In this case Mr. Justice Mer-

CUR said: "The difficulty here is not of classification only; within reasonable limits and for some purposes classification is allowable. It has been sustained on the basis of population of counties on the assumption that those having a small population may ultimately have one much larger. Here the larger are excluded. We cannot assume that their population will ever be reduced to less than the number named. They are, therefore, practically and permanently excluded by the intent and purpose of this Act, which is special in its terms and local in its effect."

The requirement that classification must be complete includes the principle that each member of a class shall be subject to transition from class to class according to circumstances. The very theory of the generality of the city and other like classification Acts also implies this, otherwise specific cities would be selected by population rather than by name. And such in fact is the practical operation of such laws.[2]

[1]Davis v. Clark, 106 Pa. St. 377; and see McCarty v. Commonwealth, 110 Pa. St. 243; Morrison v. Bachert, 112 Pa. St. 322; City of Scranton v. Silkman, 113 Pa. St. 191; Rymer v. Luzerne County, 142 Pa. St. 108.

[2]Monroe v. Luzerne County, 103 Pa. St. 278; Luzerne County v. Glennon, 109 Pa. St. 564; Guldin v. Schuylkill County, 149 Pa. St. 210; Commonwealth v. Wyman, 137 Pa. St. 508; Commonwealth v. Macferron, 152 Pa. St. 244.

8. TRANSITION FROM CLASS TO CLASS.

Luzerne County having at the time of the adoption of the Constitution a population in excess of 150,000 was subject to the provisions of the salary Act of March 31st, 1876, P. L. 13, enacted to carry into effect the provisions of Article XIV, Section 5, in relation to the compensation of county officers. By the erection of the county of Lackawanna out of the county of Luzerne in 1878 the latter had a population of less

than 150,000 inhabitants. The effect of this, without legislation, was to restore the operation of the fee system, as governed by the existing statutes, in the county of Luzerne. In the case of Monroe v. The County of Luzerne,[1] the facts as to population appeared in the case-stated, and it was held that the plaintiff, who entered upon his duties as prothonotary in January, 1880, was not entitled to salary under the Act of 1876. Referring to the Act of 1876, Chief Justice MERCUR said: "This Act is general in its terms. It is designed to apply to counties then containing the requisite population, and also to those that might thereafter acquire it; whenever the effort is made to apply this Act to an officer of any particular county, the fact to be ascertained is whether the county contained sufficient population at the time the officer entered upon the duties of his office. Whatever the population may previously have been or what it may thereafter become, does not control the case. By what mode that population shall be ascertained does not arise in this case."

The recorder of deeds who entered upon his duties in January, 1884, was a party in a subsequent suit to determine the status of the county officers of Luzerne County. The census of 1880 showed a population of the county of 133,066, and the case-stated set forth that when the incumbent entered on his official duties the population of the county was over 150,000, "based upon the reasons set forth in the following paragraph," which deduced the conclusion from a comparison of inhabitants and taxables in 1880 with the taxables in 1883. The terms of the case-stated were not regarded as furnishing an admission of population, and the office was held to be still subject to the fee system.[2] Mr. Justice STERRETT said: "The only legally-recognized method of determining the population of any particular county or district is by resorting to the last preceding decennial census; and, according to that the population of Luzerne County is less than one hundred and fifty

thousand. We do not say it is not competent for the Legislature to provide some other or additional mode of determining the fact; but, until some other legal provision is made, we must be governed by the only-recognized rule applicable to the subject. In Luzerne County v. Griffith, 1 Kulp, 297, this court said: 'In the absence of express legislative declaration of the fact, or of any other method provided by the Legislature for ascertaining it, the last preceding decennial census is to be resorted to as the best evidence of the population of a county in case of classification of counties by population.'

"In the light of existing legislation, we have no doubt that for the purposes of classification under the various salary Acts, each county must remain in the class in which the last census found it until it is transferred to another class by a subsequent census. The United States decennial census is the only official determination of population that we now have, and the inconvenience and injustice that would necessarily arise from accepting any unofficial guide to the classification of counties, for salary purposes, cannot well be overestimated. Legislative and judicial apportionments are both based on population determined by the last preceding census. The Constitution provides that 'whenever a county shall contain forty thousand inhabitants' it shall constitute a separate judicial district; but, in Commonwealth *ex rel.* Chase v. Harding, 6 Norris, 351, we held that such separate districts can only be formed after a decennial census showing the requisite population. The cases, it is true, are not exactly parallel, but the analogy is very close."

By the census of 1890 it appeared that Luzerne County had a population in excess of 150,000 and the salary system was consequently restored.[3] By the same census taken in June, 1890, it appeared that the county of Schuylkill had a population in excess of 150,000. The coroner elected in 1889 who entered upon his office in January, 1890, was party to a suit to determine the compensation of the officers of that

county. The claim was that the Act of 1876 governed his compensation for 1891, notwithstanding the provision of Article III, Section 13, of the Constitution, which provides that no law shall increase or diminish the salary or emoluments of a public officer after his election or appointment. The court below was of opinion that the case was within the Act of 1876, and that the constitutional provision must be construed to mean a law passed after the election or appointment of the officer. But the Supreme Court held otherwise and the judgment was reversed.[4]

In Pittsburg's Petition,[5] it was held that the fact that the Act of June 14th, 1887, P. L. 395, in relation to the government of cities of the second class fixed certain dates for the doing of things necessary to put the city government in operation, compliance with which direction was possible only in the city of Pittsburg, the then sole city of that class, and made no corresponding provision for cities afterwards coming into it, did not render the Act invalid as a local law.

In Commonwealth v. Wyman,[6] Chief Justice PAXSON said: "It has been ascertained, in the manner required by law, that the city of Allegheny has now a population which entitled it, under the classification Acts of 1874 and 1889, to become a city of the second class. Prior to the last census it was a city of the third class. It now passes from the one class to the other, by reason of its growth in population, without shock or disturbance. It is the first event of the kind in the political history of the State, and is not without interest.

"It is conceded that up to the present time the city of Allegheny has been governed by the special Act of March 31st, 1870, P. L. 717, entitled 'An Act to reduce the charter of the city of Allegheny, and the several Acts amendatory thereof, into one Act.' By that Act the powers of the municipal government were vested in the Mayor and select and common councils. The select council was composed of two members from each ward, to serve for a term of two years, which term was increased by the Act of 1881 to four years.

There being thirteen wards in the city, the number of select councilmen had hitherto been twenty-six.

"It is also conceded that the city of Allegheny, while it has been a city of the third class, under the classification Acts aforesaid, has never accepted the provisions of the general city laws of 1874, and hence, as was decided in Henry Street, 123 Pa. St. 347, was not governed by their provisions, but remained subject to the said special Act of 1870.

"The transition from the one class to the other works no change in its government except such as the law makes necessary to adjust it to the class into which it goes. It repeals no ordinances; it vacates no offices except those which it abolishes, and makes no vacancies to be filled except by the creation of new offices. The offices of Mayor, and of select and common councils are common to each class of cities. The mere fact of the transition does not necessarily unseat the persons legally filling such offices at the time it occurs, but they serve out their official terms for which they were elected, and their successors are elected under the laws regulating the class into which the city has moved. In the meantime the officers, whose terms have not expired, become possessed of all the powers and are subject to all the duties pertaining to the offices held by them in cities of the class to which it has advanced. In other words, the machinery of the old government is to be used in adjusting the city to its position under the new. Were it otherwise, were all offices to be suddenly vacated, we would have chaos. We would have a city without a Mayor, without councils, without heads of departments, without police officers to preserve the public peace, and no one authorized to set in motion the machinery by which the new government can be organized."

The precise question for determination, in this case, was whether it is the duty of the respondent, as Mayor of the city, to issue his official proclamation, ordering the election, at the next municipal election, of one member of select council from each ward in the city. The court below was of opin-

ion that such election was necessary, and awarded a *mandamus* ordering the Mayor to issue his proclamation therefor. From this decision the Mayor appealed. It was held in view of the situation of the municipal government that a proper application of the statutory law did not require an election, and the judgment below was reversed.

Counsel in this case submitted a further question, to wit, whether under the Act of June 14th, 1887, P L. 395, providing for the choice by city councils of heads of departments of public safety, public works, and charities, these respective officers should be elected by the councils of the new or old city? The court said: "Upon this point we are in no doubt. The present councils are the councils of the new city, if I may use a term which does not quite accurately describe the situation. The city remains the same. It merely passes from one condition to another. It enters the new with all its ordinances; all its officers whose offices have not been abolished; all of its contracts in full force, and simply conforms for the future to the new regulations which the law declares shall supersede the old. The machinery of the latter, as before observed, must be used to start the city under its new government.

"We are of opinion that the present councils should proceed to elect the heads of departments."

In Commonwealth v. Macferron,[7] a case arising upon the transition of the city of Allegheny into the second class of cities, Mr. Justice WILLIAMS said: "This appeal presents a single question. It is one of considerable practical importance and has not yet been definitely settled by decision. The Act of 1874 divided the cities of the Commonwealth into three classes upon the basis of population. It also provided that when any city of a lower class had reached the limit of population for the class above it, this fact when properly ascertained should be certified by the Governor to the councils of the city, and upon the recording of such certificate upon the records of councils, the city must pass, *eo instanti*, into

the class in which its population entitled it to be. We are now to inquire how much of the legislation peculiar to city, or to the class of cities out of which it goes, it can take with it into the new class of which it becomes a member, and how much it must leave behind? In answering this question we should consider, first, the objects of classification as declared by the Legislature; and, next, the several provisions of the Act of 1874, and supplementary legislation, by which these declared objects are carried into practical operation.

"The first section of the Act of 1874 sets out very clearly the object of classification. It is to regulate the exercise of certain corporate powers, and the number, character, powers, and duties of certain corporate officers in the cities composing the several classes. The same section declares that 'the corporate powers and the number, character, powers, and duties of the officers of cities of the several classes now in existence by virtue of the laws of this Commonwealth shall be and remain as now provided by law except where otherwise provided by this Act.' Here is a very plain declaration of legislative intent to recast the governments of cities in such particulars as might be necessary to their classification, and to secure uniformity in the general outline of the municipal government, provided for all the members of each class. Here is also an equally plain declaration of the legislative purpose to leave each city in the full enjoyment of all its powers, rights, and privileges not superseded by the uniform scheme or plan of municipal government provided for the class into which such city may come. As was held in Commonwealth *ex rel.* v. Wyman, 137 Pa. St. 508, the transition of a city from one class to another works such change in its government as the law makes necessary to adjust it to the class into which it goes. In other respects it works no change, but the city brings its municipal belongings with it into the new class. It would seem that we are thus provided with an answer to our question by the Act of 1874. So far as the legislation affecting a city of the third class conflicts

with the uniform general plan of municipal government provided for cities of the second class, so far it must, upon its transition into that class, leave its former system behind it; else it could not adjust itself to the class into which it has come, and the whole scheme of classification would fall. So far as its former legislation is not in conflict with the legislative plan of government for the new class so far it remains in full force.

"Let us now apply this test to the case before us. The city of Allegheny was provided, while it was a city of the third class, with a system for the levy and collection of its taxes. The law has provided a very different system for cities of the second class. The two cannot stand together. It is clear, therefore, that in order to adjust itself to the class into which it has come, this city must leave its old system behind it, and take on that which the law has prescribed for it as a member of the second class. This is rendered still more apparent when we remember that the power to levy and collect taxes is one of the 'corporate powers' which the classification Acts have undertaken to regulate; and that the officers through whom such levy and collection are made, are 'corporate officers,' whose powers and duties are defined and adjusted by the same Acts. If no provision for the levy and collection of taxes in cities of the second class had been made, the system previously in existence in such cities would have remained undisturbed under the express declaration of the first section of the Act of 1874, but to the extent to which the law has regulated the exercise of the taxing power, or modified the powers and duties of the officers through whom it is exercised, to that extent the old system is superseded by the new, and upon the transition of a city from the lower to the higher class it exchanges its outgrown municipal dress for that which the law has provided for every member of the class into which it comes. If this was not so, the very objects of classification would be defeated and, instead of uniformity among the members of each class, we should have the same

diversity in the organization and administration of the government of cities as existed when the Act of 1874 was adopted. Under the letter of the Constitution cities constituted a single class, and as local legislation regulating municipal affairs was forbidden, classification became necessary to avoid intolerable inconvenience and hardship: Wheeler v. The City, 77 Pa. St. 338. Instead of one form of municipal government for all the cities of the Commonwealth we now have three forms, one for each class, and to the forms so provided every member of each class must conform. A reason for this is found in the fact that since 1874 local legislation regulating the affairs of a city is forbidden by the Constitution, so that legislation for that purpose can be had only for a class, and must be applicable to every member of the class."

[1]Monroe v. County of Luzerne, 103 Pa. St. 278; and see County v. Griffith, 1 Kulp, 297.

[2]Luzerne County v. Glennon, 109 Pa. St. 564; s. p. Guldin v. Schuylkill County, 149 Pa. St. 210.

[3]Rymer v. Luzerne County, 142 Pa. St. 108.

[4]Guldin v. Schuylkill County, 149 Pa. St. 210; s. p. Commonwealth v. Comrey, 149 Pa. St. 216.

[5]Pittsburg's Petition, 138 Pa. St. 401.

[6]Commonwealth v. Wyman, 137 Pa. St. 508.

[7]Commonwealth v. Macferron, 152 Pa. St. 244.

9. Option Under Classification Acts.

Option under classification Acts was not at first regarded as admissible. The question first arose in the case of the Appeal of the City of Scranton School District,[1] which brought in question certain provisions of the Act of 1874, and the supplement thereto of March 18th, 1875, P. L. 15. In this case the plaintiff claimed the benefit of that provision of the first section of the Act of 1875 which directed that in cities of the third class, for the purposes of taxation, all real estate and the improvements thereon should be classified and arranged

in three classes upon which different rates of assessment should be imposed. The rate claimed by the plaintiff was less than the full rate levied upon the assessed valuation made for city purposes, at which the defendant, the school district, had caused the school tax to be assessed. The proviso to the fifth section of the Act of March 15th, 1875, excluded from the operation of the Act all cities of the third class, and all cities containing less than ten thousand population, previously incorporated, which did not accept the provisions of the Act by an ordinance duly passed. Accepting cities therefore were subject to the methods of assessment and collection prescribed by the first five sections of the Act, while different methods would prevail in non-accepting cities. These provisions of the Act of 1875 were held to be invalid on the ground that the diversities proceeding from the operation of the law rendered it local and special.

The case of Reading v. Savage,[2] arose upon the provision of Section 57 of the Act of May 23d, 1874, P. L. 230, making the Act applicable to such cities of the third class or any city of under 10,000 inhabitants theretofore incorporated as might accept its provisions. The city of Reading had accepted the provisions of the Act and the case was upon a lien filed thereunder. The defense was that the acceptance was invalid. Under former legislation the city was without power to enforce such a claim as that for which the lien had been filed. The court below sustained the defense upon the authority of the Appeal of City of Scranton School District (*supra*), from which the following principle was deduced: "Wherever the provisions of an Act are compulsorily binding upon every city of the particular classification the legislation is general and constitutional. Whenever the provisions are binding at the option of the local authorities the legislation is special, local, and unconstitutional." The judgment was affirmed in a *per curiam* opinion adopting the opinion of the court below. Upon reargument, ordered by the court of its own motion, the judgment was reversed.[3]

In the opinion the distinction between the provision of the Act of 1875 in question in the Scranton case, and that of the Act of 1874, in question in the case before the court, was pointed out; the former was said to be a disabling, the latter an enabling provision. The former tended to diversity. Cities of the third class under the Act of 1874 might or might not accept the provisions of the Act of 1875. Hence its results were special and local. It did not necessarily govern a constitutional class. The Act of 1874 being a general law without words of repeal did not take away the pre-existing legislation governing those cities whose population made them eligible to the third class. The option was the means whereby the city by proper action might avail itself of the provisions of the Act of 1874. As city after city might do this the results tended to uniformity, such cities thereupon became subject to the provisions of the Act of 1874 and of such subsequent legislation as might relate to cities of the third class. Non-accepting cities remained subject to their old charters beyond the reach of improvement by legislation except upon condition of renouncing them and accepting the uniform provisions of the Act of 1874.

The city of Meadville was originally incorporated under the Act of February 15th, 1866, P. L. 57, and its supplements. Under this legislation it was without authority to assess the cost of sewers on adjoining property. The Act of April 11th, 1876, P. L. 20, supplementary to and amendatory of the Act of 1874, amending the fifty-seventh section and others, provided that any city of the third, fourth, or fifth class might accept the provisions of the Act, or of any portion or portions thereof, by ordinance reciting the provisions adopted. The city of Meadville had adopted such portions, among others, as related to sewer assessments. In a case arising on such an assessment the defense was sustained by reason of the invalidity of the Act of 1876, upon the authority of Ayars' Appeal. Such a lien was held to depend upon statutory authority for its creation. As the Act of

1876 was void the question whether a partial acceptance of the Act of 1876 might be sustained was not reached.[4]

The city of Wilkes-Barre was eligible to the third class of cities under the Act of 1874, but had not accepted its provisions. The Act of May 23d, 1889, P. L. 274, entitled "An Act constituting each city of the third class a single school district, providing for the election of its school controllers, the levy and collection of taxes and the management of its affairs," provided in Section 9 that any city of the third class now incorporated may accept and become subject to the provisions of this Act by resolution of its school boards. The boards of the city of Wilkes-Barre having accepted the provisions of the Act its validity was questioned in Commonwealth v. Reynolds.[5]

After referring to the above provision Mr. Justice CLARK said: "It is plain that this provision is precisely similar, in effect, to the Act of 1875, which was passed upon in Scranton School District's Appeal (*supra*): its tendency is not to uniformity, but to diversity; its results are not general, but special and local. It will be observed that 'any city of the third class,' incorporated before its passage, whether by special charter or under the general law of 1874, may accept its provisions, and any of such cities may refuse to accept them. Wilkes-Barre is a city of the third class by special charter. The local authorities of the city have not yet accepted the provisions of the Act of 1874, but desire to avail themselves of the Act of 1889, which is not an amendment to the Act of 1874, but an original Act. If the Act of 1889 is sustained, we are liable to have cities of the third class: (1) by special charter as before; (2) by special charter and under the Act of 1889; (3) under the general Act of 1874; and (4) under the Acts of 1874 and 1889. Another such statute would double these possibilities, and each succeeding similar enactment would double the possibilities then existing. This diversity, thus increasing in a geometrical ratio, would result in a confusion and disorder with which the evils of undisguised special

legislation cannot be compared. In order to procure special legislation upon any subject relating to the government of cities, it would only be necessary to procure the passage of a law, in general form, with the specific and special features desired, with a provision that it would apply only to such cities as might accept it, and it would be possible, in this form of legislation, for each city of the third class in the State to have, to some extent, it own peculiar system, with like effect as if enacted by special law.

"The Legislature, in the Act of 1874, provided a general system, upon which are found all the cities thereafter incorporated, and upon which are to be put, ultimately, all other cities of the third class, as beads are put upon a string. The system may be strengthened or extended, but it cannot be parted or divided. The loose beads, as they are taken up, must be put upon the string, and not upon one of the strands of which the string consists. The system, under the Constitution, is necessarily an entirety; and the special charter city, in passing upon the acceptance of the provisions, under an elective clause such as is contained in the Act of 1874, must decide to take all or none of them.

"We are of opinion, therefore, that the Act of May 23d, 1889, is in contravention of Article III, Section 7, of the Constitution of the State, and that upon this ground the entire Act is void. In this view of the case, it is unnecessary to consider the Act with reference to the other provisions of the Constitution referred to."

In Commonwealth v. Denworth,[6] the Acts of March 24th, 1877, and its supplements of May 1st, 1879, P. L. 44, and February 14th, 1881, P. L. 26, were held invalid. The first Act was entitled "An Act creating and defining the duties and powers of a recorder for cities whose population does not exceed 30,000, and is not less than 8,500, which accepts the provisions of this Act." After providing for the exercise of the office of recorder in such cities the Act in Section 14 provided, "That this Act shall only apply to cities whose popu-

lation does not exceed 30,000, and is not less than 8,500, which shall by ordinance, duly adopted by the council or councils thereof, and approved by the Mayor, accept the provisions of this Act." The supplement of 1879 enlarged the jurisdiction of city recorders and made further regulations as to the exercise thereof. In Section 9 of the supplement it was provided, "That so much of the first section of the Act to which this is a supplement, as reads 'That the several cities of this Commonwealth, whose population does not exceed 30,000 and is not less than 8,500,' be and the same is hereby amended to read, 'That the several cities of this Commonwealth, whose population does not exceed 17,000 and is not less than 10,000:' *Provided*, That the provisions of this amendment shall not affect any city which has heretofore accepted the provisions of the Act to which this is a supplement and elected a recorder." The supplement of 1881 amended the said Section 9 of the supplement of 1879 so as to read: "That the several cities of this Commonwealth whose population does not exceed 17,000, and is not less than 10,000, and in addition thereto all cities of the fifth class organized and incorporated in this Commonwealth under and by virtue of the provisions of the Act of May 24th, 1874, and its supplements, which have heretofore or may hereafter accept the provisions of the Act to which this is an amendment and its supplements." The defendant was in the exercise of the office of recorder in the city of Williamsport under color of this legislation. The population of Williamsport was not more than 30,000, and not less than 8,500, and it had accepted the provisions of the foregoing legislation, and the case was a writ of *quo warranto* against the recorder to test its validity. In this case Mr. Justice McCollum said: "The statutes under which the appellant claims title to the office of recorder are in palpable conflict with Section 7, Article III, of the Constitution. They are local because confined in their operations to cities of a specified population, which shall accept

them by ordinance duly adopted by councils and approved by the Mayor. Whether they shall apply to a city of the class described depends on the action of its municipal officers, and in consequence thereof, one city of the class may be subject to their provisions, and other cities of the same class be exempt from them. Without further elaboration of the subject, it is sufficient to say of this legislation that it is such as was condemned in Scranton School District's Appeal, 113 Pa. St. 176."

The Act of May 23d, 1889, P L. 277, which was entitled "An Act for the incorporation and government of cities of the third class" made provision for the annexation of territory to such cities. In Harris's Appeal,[7] the validity of proceedings to annex certain territory to the city of Scranton under this legislation was in question. In this case, Mr. Justice WILLIAMS said: "The new Constitution provided for the government of the Commonwealth by general laws and denied to the Legislature the power to pass local laws on many subjects. Cities under constitutional provisions constituted one class, to be legislated for in future by laws applicable to all alike. To relieve against this hardship the classification Act was passed during the following session of the Legislature. The cities were divided into three classes upon the basis of population. There was at that time but one city in the first and one in the second class. Legislation for these classes was therefore easy of accomplishment, but in the third class, there were many cities each of which was provided, at the time of the passage of the Act of 1874, with a form of government of its own selection. These differed quite widely in the terms and duties of some of the municipal offices, and in the powers possessed by the municipalities. The effort to reduce all these, at one time, to a uniform frame of government was one that would be attended necessarily with some inconvenience. The Act was made to take effect upon all cities to be incorporated after its passage, and upon all those previously incorporated, when and as fast as they should sev-

erally elect to come in under its provisions. The expectation entertained by the lawmakers was that within a few years all the cities of the third class, then existing, would come, by election, into the class, and adopt the frame of municipal government provided by the Act of 1874. This expectation has been largely realized. A few cities still cling to their old charters, but much the larger part of them have adopted the provisions of that Act and are members of the third class, not only by reason of their population, but by reason of the character of their municipal organization. The class is a steadily increasing one, and the number of cities standing outside of it is steadily decreasing. The tendency is toward absolute uniformity. Legislation for cities of the third class is applicable to all the members of that class, and it is general, within the definition we have frequently given to the phrase 'a general law,' since 1874. If, as is said by the appellant's counsel, Wilkes-Barre is not bound by the provisions of the Act of 1889, it is because that city is still outside the class for which the Act of 1889 was framed. It is for some purposes a city of the third class under the classification Act, but for purposes of local government it remains under its charter and its system of local laws that were in force prior to 1874. For these purposes, therefore, it is not a member of the class, and is not affected by the legislation provided for the class as it exists under the provisions of the law of 1874. For purposes of classification all cities not belonging to the first or second class belong to the third. For purposes of municipal government only so many of these belong to the third class in the legislative sense of the words, as have taken on the municipal uniform which the Legislature has provided for the class. It follows logically from what has now been said that the Act of 1889, being for the class and applicable to every member of it, is general, and is not open to the objection which the appellants urged against it."

The Act of May 23d, 1874, P. L. 230, is not operative in any city of the third class which has not accepted its pro-

visions.[8] In the case cited Mr. Justice CLARK said: "It is contended, however, on the part of the plaintiff in error, that even if this be so, by the thirteenth section of the more recent Act of May 23d, 1874, P. L. 230, the exclusive control and direction of the opening, widening, narrowing, vacating, etc., of all streets, etc., within the limits of all cities in this Commonwealth is vested in 'the municipal authorities and the courts having jurisdiction' in such cases, that this jurisdiction must be exercised by the courts in conjunction with the municipal authorities, and that as the city of Allegheny has in no way consented to or recommended the vacation of Henry Street, the courts cannot entertain jurisdiction. Without entering into a discussion of the purpose of this provision of the Act of May 23d, 1874, it is a sufficient answer to this contention that the city of Allegheny has not accepted or become subject to the Act of 1874 nor to the Act of April 11th, 1876, P. L. 21, which is a supplement thereto. It is true that certain sections of this Act of 1874 might appear to apply to all cities whether its provisions have been formally accepted or not, but a careful reading of the statute shows that these sections are applicable only to all cities of whatever class which by the terms of the Act or by their acceptance have become subject to its provision.

"The design of the Act of 1874 was to establish a uniform and general system of government for all the cities of the Commonwealth; it was not designed, however, to work a repeal of any municipal charter previously created by special enactment; yet, when the municipality voluntarily relinquishes the same and accepts the provisions of the Act of 1874, in the manner designated therein, or suffers a repeal of its charter, the effect in either case is to bring the city or its inhabitants within the provisions of the general law of the State. The Act applies not only to any city accepting its provisions, but to all cities hereafter to be created; it may be said, therefore, to apply to all cities of the Commonwealth, as ultimately all may become subject to it without the reenactment of any of its provisions.

"As it is admitted that the city of Allegheny has never in any way become subject to the Act of 1874, no question arises upon the proper construction of the thirteenth section or upon the constitutionality of that Act; it will be time enough to consider those questions when they are properly presented."

[1]Appeal of City of Scranton School District, 113 Pa. St. 176.

[2]Reading v. Savage, 120 Pa. St. 198; followed in Hoopes v. Scranton, 1 Wilcox, 189.

[3]Reading v. Savage, 124 Pa. St. 328.

[4]Meadville v. Dickson, 129 Pa. St. 1.

[5]Commonwealth v. Reynolds, 137 Pa. St. 389; and see Commonwealth v. Reynolds (below), 8 C. C. R. 568.

[6]Commonwealth v. Denworth, 145 Pa. St. 172.

[7]Harris's Appeal, 160 Pa. St. 494.

[8]In re Henry Street, 123 Pa. St. 346; and see generally Commonwealth v. Halstead, 2 C. P Rep. 247, 1 C. C. R. 335; s. c., reversed, 18 W. N. C. 385; s. c., 2 C. P. Rep. 247; Van Storch v. Scranton, 3 C. C. R. 571; 3 C. C. R. 567.

In Sixteenth Street Opening, 4 C. C. R. 124, it was held that a city was not estopped from asserting the invalidity of an option provision by having acted under it.

10. Option as Related to Local and Special Legislation.

The Act of June 23d, 1885, P. L. 142, entitled "An Act to repeal the first section of an Act entitled 'An Act for regulating and maintaining of fences, approved A. D. 1700,' repealed the first section of the Act referred to in its first section, and in its second section further provided that in any county wherein a majority voted in favor of repeal, the Act should forthwith take effect, but that the same should not take effect in any county until it had been ascertained that the provisions thereof were deemed expedient and desired therein by such an election.

In Frost v. Cherry,[1] this Act was held to be invalid. Mr. Justice PAXSON said: "It is contended, and the learned judge below so held, that the Act is in conflict with Section 7, Article III, of the Constitution, which provides, *inter alia*, that 'The General Assembly shall not pass any local or special law regulating the affairs of counties, cities, townships, wards, boroughs, or school districts.'

"The word affairs, as used in the Constitution, has received a judicial construction by this court. In Morrison v. Bachert, 112 Pa. St. 322, it was said: 'When it (the Constitution), speaks of the affairs of a county, it means such affairs as affect the people of that county.' We accordingly held in that case that an Act to ascertain and appoint the fees to be received by prothonotaries and other county officers was an Act regulating the affairs of counties; while in Commonwealth v. Patton, 88 Pa. St. 258, and in Scowden's Appeal, 96 Pa. St. 422, we ruled that an Act of Assembly which authorized the holding of special sessions of the courts of Crawford County, away from the county seat, offended against this clause in the Constitution. The particular device resorted to in these cases to evade the constitutional prohibition was classification.

"The Act of 1885 concerns the great body of the people of the county. It affects every farmer, almost every lot-holder and every person who keeps horses or cattle, sheep, hogs, or goats. It would seem difficult to frame an Act which should more generally concern the people. Moreover, it prescribes certain duties to the sheriff, the commissioners, and all the election officers. How then can it be said that it does not relate to the 'affairs' of counties within the meaning of the Constitution?

"Is it a local law? Upon this point we are free from doubt. It is to be observed that the first section, repealing the Act of 1700, does not go into effect in any county by its own force. If it did we might sustain it even if the rest of the Act were unconstitutional. But the first section is tied to

the second section by an umbilical cord. If we cut it they both perish. The first section is only effective after a vote in favor of it, then the Act takes effect in such county; if the majority should be against it the Act does not take effect. Thus, it may very well happen that Venango County may vote in favor of the repeal and its adjoining counties vote against it. We would then have one law in Venango County regulating fences, and a different law in the adjoining counties, both local laws, the very thing prohibited by the Constitution. Nor would it make any difference were every county in the State to vote the same way. The test is not results, but possibilities. The machinery to test the sense of the people can only be put in operation by the county commissioners, and when so moved, the fact that it may be rendered local in its effects is fatal to the bill. In City of Scranton School District's Appeal, 113 Pa. St. 176, it was said by Mr. Justice GREEN, in delivering the opinion of the court: 'The circumstance that the power to determine the question is delegated to another body does not at all affect the question. The practical result is the same; the law of 1875 will be limited to the one or more cities that do accept and that makes it local. All our recent decisions are to the effect that if local results either are or may be produced by a piece of legislation it offends against this provision of the Constitution and is void.' Citing Commonwealth v. Patton (*supra*), and other cases. Scranton School District's Appeal is upon all fours with the case in hand. The Act of 1875 there referred to was an Act for the assessment, levy, and collection of all taxes authorized to be collected in certain cities, and to which by the proviso of the fifth section no city of the third class shall become subject until they are accepted by ordinance of councils, approved by the Mayor, and it was held that the first five sections thereof were thus limited to the one or more cities that accept, and were therefore local and in conflict with Section 7, Article III, of the Constitution.

"If there is anything now settled in the Constitution it is

that the Legislature can no longer pass a valid local or special law regulating the affairs of counties, cities, townships, wards, boroughs, or school districts. And what the Legislature may not do directly, it cannot accomplish by indirection, as by classification resting upon no necessity nor reason of public policy, or by calling in the aid of the people at the polls to breathe life into an otherwise dead statute.

"I have not considered it necessary to discuss the question of the delegation of power. The Act of 1885 is in such direct conflict with Section 7, Article III, of the Constitution, that the learned judge below could not have done otherwise than declare it void for that reason."

The Act of June 12th, 1893, P. L. 451, was entitled "An Act enabling the taxpayers of townships and road districts to contract for making at their own expense the roads, and paying salaries of township or road district officers, and thereby preventing the levy and collection of road taxes therein." The Act provided that any one or more taxpayers of any township might acquire the right to make and repair the roads of the township on petition to the court of quarter sessions, setting forth certain facts, viz., that the petitioners are owners of property and taxpayers; the approximate number of miles of roads in the township; ability of petitioners to make and repair the roads; and further, filing a bond in a sum equal to $500 for every mile of road in the township with approved sureties; thereupon, the court, on being satisfied of the good faith of petitioners, might grant the prayer, and direct the road supervisors to enter into a contract with the petitioners for the making and repair of the roads of the township for the ensuing fiscal year. This Act was held to be valid.[2] In this case Mr. Justice DEAN said: "It is not questioned that townships are a class of municipal subdivisions of the State, and laws applicable to all townships alike are general and constitutional laws. But it is argued this law would be productive of local results, and therefore is a local law. That is, some townships would take advantage

of its provisions, and contract for making and repairing their roads, while others would go on under the old law, and have the work done as heretofore, directly by the supervisors. Hence, in different townships, the work would be done under two different systems, depending on the notions of the taxpayers of the many townships of the Commonwealth. But this fact, even if it were undoubted, would not necessarily be local legislation. Nearly all the laws which, since its adoption, have been declared obnoxious to the constitutional inhibition of Section 7, Article III, have been those which sought to accomplish a local result under the guise of a nominally general law, and which, from the language of the statute and its subject, could have no other result, or which, from the very nature of the case, could not have a general application. In these cases the Act, though general in terms, was so worded that it could only relate to some members of a class, which members were identified by a geographical location, a territorial area, or a limit of population, which made them beneficiaries of the law, and excluded all others of the same class. But there is not a single township in the State which does not come under this law. If the Act had been the first one passed on the subject and had enacted that, in all the townships of the State, public roads should be made and kept in repair by the supervisors: 1, By the assessment of a money tax, collected and expended by them; 2, or by the labor of the taxpayers of each township to the value of their tax, under the direction of the supervisors; 3, or by contract of supervisors with a taxpayer or taxpayers, with the approval of the court of quarter sessions, the law would, unquestionably, have been general. But there being three different methods of doing the same thing, the roads might have been made and repaired in three different ways by three adjoining townships. The duty of each township would have been the same, to make and repair the roads within its boundaries; the object of the law, with respect to each, would have been the same, to secure reasonably good roads. That

any township might adopt any one of three lawful methods to effect the general purpose, it seems to us, could not change its general character. Here not a single township is excluded from the operation of the law because of any local peculiarity. That taxpayers will differ in opinion as to benefits from it, and, in consequence, some townships will adopt the new method, while others adhere to the old, is not a local result, but merely an exhibition of that tendency of the human mind to reach different political conclusions from the same facts." He further said: "Testing this law by its effect it operates upon all townships whose taxpayers choose to invoke it in precisely the same manner. It in substance does nothing more than permit the taxpayers to contract for all road work, where before nothing could be contracted, except such as the taxpayers did not choose to do. The duty of supervision in the supervisor remains the same.

"We may say here that, on this subject, we adhere to the principle of construction announced in Ruan Street, 132 Pa. St. 257, 'In order that a given Act of Assembly relating to a class of cities may escape the charge of being a local Act it is necessary it should be applicable to all members of the class to which it relates, and must be directed to the existence and regulation of municipal powers, and to matters of local government.' Or as is said in Wheeler v. Philadelphia, 77 Pa. St. 348: 'A statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special, and comes within the constitutional provision.' "

The subject of option as discussed in the cases in this and the foregoing section may be presented in the following summary: Option laws are, as a rule, invalid, because they produce, or may produce, diversity of laws in different localities: but that is not an option which applies alike to a given class of localities and which gives to the governing or administrative authorities of each a choice of several modes of accomplishing the same result, either of which may be adopted from

time to time according to the determination of the proper authority. An option may be offered, however, to a class of localities governed by special laws, to remain as they are, beyond the reach of any but general legislation, save by way of repeal; or to accept the provisions of a general system governing the class to which they belong. The exercise of this option tends from diversity to uniformity. But the change of system to be effected by the exercise of the option must be complete. It cannot relate to a single function nor to a single branch of government or administration, for this tends from diversity to greater diversity, nor can the option be offered to less than a class, nor to a different class than as defined by the general classification Acts, for this would be to confound classification.

[1]Frost v. Cherry, 122 Pa. St. 417, 4 C. C. R. 579.

[2]Lehigh Valley Coal Company's Appeal, 164 Pa. St. 44; reversing s. c., Lehigh Valley Coal Company's Petition, 3 P D. R. 610; Philadelphia Coal & Iron Company's Petition, 164 Pa. St. 248.

As related to the subject of option the following constitutional provisions are referred to:

Article V, Section 2, Clause 2. No township, ward, district, or borough shall elect more than two justices of the peace, or aldermen, without the consent of a majority of the qualified electors within such township, ward, or borough.

Article XV, Section 1. Cities may be chartered whenever a majority of the electors of any town or borough having a population of at least 10,000 shall vote at any general election in favor of the same.

The former provision was derived from the amendment of 1838, Article VI, Section 7. The Constitution of 1776 contained something like it. Chapter II, Section 30, "If any city or county, ward, township, or district in this Commonwealth incline to change the manner of appointing their justices of the peace as settled by this article the General Assembly may make laws to regulate the same agreeable to the desire of a majority of the freeholders of the city or county, ward, township, or district so applying."

The sixteenth section of the Act of May 8th, 1876, P. L. 149, amended by the sixth section of the Act of March 24th, 1877, P. L. 40, entitled "A supplement to an Act, entitled 'An Act to provide for the erection of a poor-house, and for the support of the poor in the several counties of the Commonwealth,' approved May 8th, 1876," is invalid in that the application of the Act is made to depend upon the adoption of it by the voters of the county or district: Taxpayers' Petition, 26 P. L. J. 146.

II. Legislation for Cities by Classes Must be Confined to Municipal Matters Proper.

By the Act of 1874, as has already appeared, cities were divided into three classes. This classification was sustained, and laws relating to either class and to municipal purposes were held valid. The Act of 1876 created five classes of cities and the Act of 1887 seven. These Acts were held void as creating an undue and unnecessary multiplication of classes. The option features of various Acts were passed upon and sustained or held invalid as they did or did not tend to uniformity. The remaining feature of city legislation is that indicated above. So far as Acts relating to classes of cities pertain to municipal purposes they are valid, but so far as they relate to other purposes within the prohibitions of the Constitution against local and special legislation they are invalid.

In Philadelphia v. Haddington Church,[1] the Act of June 27th, 1883, P. L. 161, which provided that every writ of *scire facias* "issued upon a municipal claim for the recovery of any sum of money, the subject of a municipal claim in cities of the first class, shall have the additional force and effect of a writ of *scire facias* to revive and continue the lien of said claim for a period of five years from the date of said writ," was held invalid as a local and special law within the prohibition of such laws, authorizing the creation, extension, or impairing of liens. The opinion of the Supreme Court does not point out the distinction between municipal and non-municipal purposes, but in the opinion below it was said by his Honor,

Judge ARNOLD, "It is my opinion that classification of cities and laws confined thereto are permissible only in matters relating to their municipal government, but the rights of persons and property must be secured by general laws, which must be uniform and in force everywhere throughout the State."

The distinction was first pointed out by the Supreme Court in the case of Weinman v. Passenger Railway Company,[2] in which was in question the Act of March 19th, 1879, P. L. 9, entitled "An Act to provide for the incorporation and for the government and regulation of street railway companies now incorporated, or which may hereafter be incorporated in cities of the second and third classes in this Commonwealth." It was held to be both local and special. Said Mr. Justice WILLIAMS: "The subject of this statute is therefore street railway companies, which is a subject for general legislation, while the statute professes to deal only with a limited number of these railways, and these are selected by reference to their location in certain cities. Under the guise of a general law we have here one which is special, because it relates to a few members of the general class of corporations known as street railway companies, and local because its operations are confined to particular localities, viz., cities of the second and third class. The provisions of the Constitution which forbid local and special legislation cannot be brushed aside so easily.

"It is urged that this statute is sustainable under the decisions of this court, recognizing the power of the Legislature to classify the cities of the Commonwealth for purposes of municipal government, but those cases rest upon a very different principle from that involved in the present case. For purposes of local government the State is divided into counties, townships, and other municipal and *quasi* municipal corporations. Each class of these subdivisions has purposes to subserve that are peculiar to it, and needs to be invested with the powers necessary to that end. Generally speaking,

all the members of each class have the same local functions to perform. Classification, therefore, upon this basis has been recognized, and a statute relating to all the townships, all the school districts, or all the members of any particular class of the municipal divisions of the State has been held to be constitutional.

"It has been found desirable to divide cities into classes upon the basis of their population. The needs of a great city with half a million or more of people are somewhat different in many respects from the needs of a city with 10,000. The organization of their local government and the management of their municipal affairs will be quite unlike. Each of these classes requires legislation peculiar to itself, but such legislation must be applicable to all the members of the class to which it relates, and must be directed to the existence and regulation of municipal powers and to matters of local government. The supposed classification in the Act of 1879 is of a very different character.

"The Act provides for the incorporation and government of street railway companies, but it does not affect all such companies. It selects such companies as may be located in cities of the second and third class, and makes special provision for them, while all other street railway companies remain under the operation of the general law. This is just what the Constitution declares shall not be done."

The Act of May 6th, 1887, P L. 87, entitled "An Act relating to the opening and widening and assessment and payment of damages and benefits for the opening, widening, and change of grade of streets in cities of the first class, and regulating proceedings therein," made detailed provisions in accordance with the purposes expressed in the title. The Act comprised seventeen sections. It was held to be invalid, except the first two sections, which were sustained because they repealed an existing system for the assessment of damages, and in effect put in its place a system prevailing generally throughout the Commonwealth; the remaining sections were held to

be void because they did not relate to municipal purposes within the principle justifying the classification of cities.[3] In this case Mr. Justice WILLIAMS said: "In order that a given Act of Assembly, relating to a class of cities, may escape the charge of being a local Act, it is necessary, as was said in Weinman v. Railway Company (*supra*), that it should 'be applicable to all the members of the class to which it relates, and must be directed to the existence and regulation of municipal powers, and to matters of local government.' A law that will bear the application of this test is within the purposes for which classification was designed, and therefore constitutional. A law that will not bear its application is local, and offends against the Constitution. Among the many subjects of legislation which classification presents, we may call attention to such as the establishment, maintenance, and control of an adequate police force for the public protection; the preservation of the public health; protection against fire; the provision of an adequate water supply; the paving, grading, curbing, and lighting of public streets; the regulation of markets and market-houses, of docks and wharves; the erection and care of public buildings, and other municipal improvements. These are mentioned, not because they include all the subjects for the exercise of municipal powers, but as a suggestion of some of the more obvious ones and as an illustration of the character of the subjects upon which legislation for the classified cities may be necessary. These classes are thus seen to embrace, not mere geographical subdivisions of the territory of the State, but organized municipalities, which are divided with reference to their own peculiar characteristics and needs, and the legislation to which they are entitled by virtue of such division is simply that which relates to the peculiarities and needs which induced the division. In this way each class may be provided with legislation appropriate to it, without imposing the same provisions on other classes to which they would be unsuitable and burdensome.

"We come now to inquire what legislation remains forbidden to cities, notwithstanding classification. I reply that all legislation not relating to the exercise of corporate powers, or to corporate officers and their powers and duties, is unauthorized by classification. In Article III, Section 7, the Constitution declares that the Legislature shall not pass any local or special law 'regulating the practice or jurisdiction of, or changing the rules of evidence in, any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery, or other tribunals.' The same section forbids the passage of any local or special law fixing the rate of interest, exempting property from taxation, changing the laws of descent, affecting the estates of minors, and many other purposes, among which is 'authorizing the laying out, opening, altering, or maintaining roads, highways, streets, or alleys.' It is very clear that the purpose of the constitutional provision is to require that laws relating to the several subjects enumerated in Section 7 shall be general, affecting the whole State, so that the rule upon all these subjects shall be uniform throughout every part of the territory in which the Constitution itself is operative. For example, there cannot be one rate of interest in cities of the first class, another in those of the second or third, and still another for the rest of the State, but the rate, when fixed by law, must apply to all parts and divisions of the State alike. The same thing is true of the law of descent, and so on, through the entire list of subjects upon which local and special legislation is forbidden. If classification can relieve against the constitutional prohibition as to one of these subjects it can relieve as to all. If it can justify a change in the practice in the courts of law, or the proceedings to assess damages for an entry by virtue of the right of eminent domain, it can, by the same reasoning, justify a change in the law of descents, or the settlement of estates, or the rate of interest, and sweep away the entire section with all its safeguards." Applying this reasoning the Act

was held invalid in so far as it related to the practice and procedure prescribed in the Act for the exercise of jurisdiction in relation to its subject-matter.

The Act of June 14th, 1887, P. L. 386, was entitled as shown in the note, and was an elaborate statute relating to street improvements containing thirty-four sections. Its validity was in question in Wyoming Street,[4] and the cases reported under the name of Wyoming Street were subsequently epitomized in Scranton v. Whyte by the same learned justice who wrote the opinion in Wyoming Street as follows:

"The cases involved the validity of municipal liens, entered upon the awards of a 'board of viewers.' This board was appointed by the court of common pleas of Allegheny County, but only on the nomination of the city. Its members were removable by the same court, but only on request of the city. Their salaries were fixed by the city, and paid out of the city treasury. All claims for damages done by the entry of the city on private property were required to be submitted to them for adjustment. Their report was made, not to the court that appointed them, but to the city, which sat as an appellate court to review and revise the awards against itself for the injury it had done its citizens by its entry on their lands, under the right of eminent domain. The judgment thus rendered by the city, in its own case, was conclusive on the citizen, unless he fled to a court of law at a rate of speed that left no dust on his feet. Having assessed the damages done by the city, the board of viewers added all costs and expenses to that total, and charged the entire amount on adjoining property as benefits, without regard to whether the improvement had conferred any benefits on the property charged or not. The measure of a lot-owner's liability was, therefore, not the benefit he had received, but his share of the loss some one else had suffered. The statute under consideration in that case fell, because the board of viewers, with its powers and functions, was indispensable to the sys-

tem provided by it, and the provisions relating to the board were unconstitutional."

In the opinion in Wyoming Street, Mr. Justice WILLIAMS said: "Some confusion seems to exist, however, in regard to the definition of a general law, and a theory has been advanced in several recent cases, and has been contended for by the appellee in this case that the division of the cities of the State into classes by the Act of 1874, which was recognized as a necessary classification in Wheeler v. Philadelphia, 77 Pa. St. 338, required us to hold any law to be general which embraces all the cities of a given class, without regard to the subject to which it relates. This theory overlooks the objects and purposes of classification, which are very clearly set forth in the first section of the Act which divides the cities of the State into three classes. These are, to make provision for the municipal needs of cities which differ greatly in population. Differences in population make it necessary to provide different machinery for the administration of 'certain corporate powers,' and to make a difference in 'the number, character, powers, and duties of certain corporate officers,' corresponding with the needs of the population to be provided for. An Act of Assembly that relates to a subject within the purposes of classification, as they are thus declared by law, is a general law, although it may be operative in a very small portion of the territory of the State, if it relates to all the cities of a given class. For example, an Act relating to the lighting of streets in cities of the third class would be a general law for the following reasons: (a) It relates to the exercise of 'corporate powers;' (b) It affects all the cities of a given class in the same manner; (c) It affects the inhabitants and property-owners in such cities, because of their residence and ownership therein, and the circumstances and needs that are peculiar to the class of which this city belongs. But a law that should provide that all applications made by guardians, administrators, and executors for leave to sell the real estate of a decedent for the payment of his debts in cities

of the third class should be made, not in the court having jurisdiction of the petitioner's accounts, but in the court of quarter sessions, would be a local law, and therefore unconstitutional. It would be applicable to the same class of subdivisions of territory as the law relating to the lighting of streets, but it would relate to the exercise of no corporate power residing in a city, nor to the duties of any municipal officer, nor to the needs or welfare of citizens of a city of the third class, as distinguished from other cities of the Commonwealth. On the other hand, it would affect the jurisdiction of the State courts, modify the duties of public officers whose functions are not local but general, and touch the inhabitants of cities of the given class in the exercise and enjoyment of their rights as citizens of the State, not as dwellers in the municipality. The test, therefore, by which all laws may be tried is their effect. If they operate upon the exercise of some power or duty of a municipality of the given class, or relate to some subject within the purposes of classification they are general, otherwise they are local." The opinion examines the various provisions of the bill, and concludes, "If it is not our duty, and we have no desire to speak of this Act of Assembly except as the case may require it. We therefore content ourselves with saying that so much of it as relates to the creation, functions, powers, and compensation of the board of viewers is in plain violation of Article III, Section 7, of the Constitution and cannot be sustained. These provisions do not relate to any municipal function or officer, but to the jurisdiction of and practice in the courts of law of Allegheny County. They fasten upon such of the citizens of the Commonwealth as are owners of property in a city of the second class, a new, inconvenient, injurious, and despotic system for the assessment of damages done by the exercise of the right of eminent domain, to which citizens in other parts of the State are not subjected. They fasten upon lot-holders, who are assessed with benefits, a new, inconvenient, and despotic system for the assessment of benefits, to which citizens in other portions of the State are not subjected."

In Straub v. Pittsburg,[5] which involved the corporate authority of the city of Pittsburg to convey the Pittsburg City Poor Farm, the title to which was originally acquired under special legislation relating to the relief and employment of the poor in said city, and the charge of the poor having devolved upon the department of charities by virtue of the Act of June 14th, 1887, P. L. 395, relating to cities of the second class, it was held that such power existed, and that the twelfth section of the said Act of 1887, which provides that the councils of such said cities shall have full power and authority to provide by ordinance for the relief and employment of the poor of said cities, and for that purpose shall have the power and authority to sell and purchase real estate and improvements and erect such improvements as may be deemed necessary for the proper care and maintenance of said poor, was valid, caring for the poor of a city being a municipal function.

The case of Pittsburg's Petition,[6] embraced seven appeals and cross-appeals which were argued together. In the court below the various proceedings were disposed of in one opinion. They were: (1) The petition of the city to the court of quarter sessions for the appointment of viewers under the Acts of May 13th, 1871, P. L. 840, March 20th, 1873, P. L. 325, and January 6th, 1864. It set forth that the Act of June 14th, 1887, P L. 386, had been declared invalid in Wyoming Street (*supra*), and that the Act of May 16th, 1889, P. L. 228, being open to the same objections the city was remitted for remedy to the first named Acts. This petition was denied on the ground that, assuming these Acts to be in force, they prescribed certain conditions precedent which had not been complied with;—the proceedings involved having been pursuant to the later legislation and on the theory of its validity, these conditions had been disregarded. (2) A bill in equity by certain property-owners to restrain the opening and improving of a certain street, and assessing the cost of the same on plaintiff's property, in which a decree of invalidity of the Acts of June 14th, 1887, P. L. 395, June 14th, 1887, P. L. 386, and May 16th, 1889, P. L. 228, was sought, and also a

decree that the city was without power or authority to lay out, open, or otherwise improve any of the streets or highways within its limits. It was also averred that plaintiff's property was rural, and not subject to the foot-front rule of assessment. (3) Another bill of substantially similar nature related to another street. (4) A third bill of substantially similar nature related to a certain sewer. The hearing was upon bills and answers. The city denied that the foot-front rule was applied and alleged the assessments were according to benefits and set up the Acts of 1887 and 1889 as governing the cases. So much of the matters involved in the bills in equity as challenged the validity of the municipal organization of the city of Pittsburg need not be treated of in detail here. The result reached was that the city had power to prosecute public improvements, and injunctions staying the work were refused. But it was also decided that no valid statutory authority existed to charge the pending improvements upon the property benefited, because the Acts of 1887 and 1889 known as the Street Laws were invalid, upon the ground that when the work of the board of viewers was taken out of the system all that depended upon that work went with it and the system was literally eviscerated. That the few detailed and unrelated provisions that might remain were without significance or value and ought not to survive the system to which they belonged.

In the case of Scranton v. Whyte,[7] which was an appeal from the discharge of a rule for judgment for want of a sufficient affidavit of defense in a *scire facias sur* municipal claim, certain provisions of the Act of May 23d, 1889, P. L. 277, relating to municipal liens were in question. It was objected that these provisions related to liens in cities of the third class only, and that the practice of the courts, the rules of evidence, and the effect of sheriff's sales of real estate, were affected by special rules embodied in these provisions. After pointing out the general propriety of the provisions of the Act of 1889, that the grading and paving of streets was a sub-

ject of municipal control, that the right to collect the cost by any appropriate form of taxation was a municipal power, and that assessment for benefits under the rules governing such assessments was proper, Mr. Justice WILLIAMS continued:

"But some provision must be made for the collection of the assessment, and the Act authorizes the entry of a municipal lien for the amount, if not paid when due. This is the method for collecting similar assessments in cities of the first and of the second classes. It is not the introduction of a new, but an adoption of an old and well-understood mode of procedure to secure the city, and give notice of the incumbrance. So much of this article as gives a lien for ten years, without a revival, may be open to criticism, but that question is not raised on this record. For the usual period fixed for the duration of liens, appearing by the records of the court, this lien is certainly good, if there was authority to enter it in the first place. The amount of the lien may be collected, according to the article of the Act of 1889 we are considering, in either of two ways, viz., by an action against the person of the owner, or by a writ of *scire facias*, and a proceeding against the land bound by the lien. These are usual modes of procedure, in which the practice is well settled, and are to be pursued in the ordinary manner. When the defendant is served with the writ of *scire facias* he must make an affidavit of defense, as in a case of a *scire facias* on a mechanic's lien, a judgment, or a mortgage, or as in the case of any action brought to recover a sum of money due. If he does not do this the statements in the claim filed are to be taken as proof, *prima facie*, of the facts stated therein, and judgment may be taken, as in any case under the affidavit of defense laws. Here, again, the established practice in the courts, in like causes, is adopted for the enforcement of the lien in favor of the city. But it is thought that the provision, which declares that a sale by the sheriff of the land bound by the lien shall be deemed a proceeding *in rem*, and shall vest a good title in the purchaser, is an interference with settled

rules of law, and therefore unconstitutional. If this was so, it could not affect the case now before us; our question is not with the title of purchaser at sheriff's sale, but with the right of the city to a judgment upon the *scire facias*. But if the proceeding by *scire facias*, resulting in a sale by the sheriff, is a proceeding *in rem*, the fact that it is so declared in the Act is of no consequence. The declaration would be, in that case, mere surplusage. . . .

"The Act of 1889 provides for the ascertainment of damages and the assessment of benefits, by a system in harmony with that in use in cities of the first and second class. Its provisions, authorizing the filing of a municipal lien for unpaid assessments and the collection of the amount so secured, by means of a personal action or a writ of *scire facias*, are not diverse from those in force in other cities, but in harmony with them. They do not change the established modes of procedure in the courts of law, or the rules of evidence. They create no new style of liens, they change no settled rule of property. The court below was, therefore, in error in holding the Act to be unconstitutional, and the affidavit of defense to be sufficient."

The Act of May 8th, 1876, P. L. 147, entitled "An Act relating to the use of motive power upon passenger railways," enacted "that passenger railways in any and all cities of the first class . . . may use other than animal power . . whenever authorized so to do by the councils of such city, and the limitations contained in any of the charters of passenger railway companies, restricting them to the use of horse power," were repealed. The validity of this statute was sustained in Reeves v. Philadelphia Traction Company.[8] Said Mr. Justice MITCHELL: "If this statute is constitutional, it supplies the necessary authority. It is claimed, however, that it transgresses the prohibition of Article III, Section 7, of the Constitution, in that it is a local or special law amending or extending the charter of a corporation. But under the settled construction of this section, classification of subjects, includ-

ing cities, is permissible, and legislation which applies alike to all the members of a class is not local or special but general. The important inquiry, therefore, is whether the Act of 1876 is upon a subject as to which the classification of cities is proper. Repeated decisions of this court have marked out the lines upon which such classification may proceed. It is not necessary to cite them all, but in one of the latest, Wyoming Street, 137 Pa. St. 494 (503), our Brother WILLIAMS has put the test into the compactest phrase: 'The test, therefore, by which all laws may be tried is their effect. If they operate upon the exercise of some power or duty of a municipality of the given class . they are general,' and he gives, as an example, 'an act relating to the lighting of streets in cities of the third class would be a general law.' The control of the vehicles that should be used on the public streets for the general conveyance of passengers, the rate of speed, and the motive power by which they shall be propelled is equally or even more peculiarly the subject of municipal duty. In fact, public conveyances, whether ferry boats, barges, hackney coaches, or omnibuses, have been subjects of police regulation and licenses as long as they have been known or used in Pennsylvania. The Act of 1876 is therefore upon a subject proper for municipal classification and is a general law. It takes off restrictions previously existing as to the motive power of cars upon streets, and commits the whole subject to the control of the cities themselves acting through their councils. This is its effect, and that is the test of its constitutionality. That incidentally it has affected and enlarged the charters of certain railway corporations does not vitiate it as an exercise of unquestionable police powers over subjects within their proper province. The second clause of the Act expressly repealing the charter restrictions to horse power as a motor, is not an essential part of its substance, and might have been omitted without impairing its general scope and effect. It was manifestly added to prevent any question of the application of the Act to companies already chartered.

"The learned court below thought itself bound by the decision in Weinman v. Passenger Railway Company, 118 Pa. St. 192, but there is a distinction between the cases that is capable of a sharp definition. The statute involved in that case was one relating to the formation of corporations. In the language of the opinion 'the subject of this statute is street railway companies, which is a subject for general legislation, while the statute professes to deal only with a limited number of these railways, and these are selected by reference to their location in certain cities. Under the guise of a general law we have here one which is special, because it relates to a few members of the general class of corporations known as street railway companies, and local because its operations are confined to particular localities.' The essence of that decision is that the formation of corporations, their corporate powers, capital stock, dividends, etc., have no relation to the classification of cities, and cannot be made in any way to depend thereon. The Act of 1876 on the contrary, as we have seen, has nothing to do with the formation, stock, or dividends of passenger railway companies, but refers solely to the management of their cars on the public streets, a subject having close relation to the powers and duties of the municipal authorities to which the Act commits its control."

Sections 11 and 12 of the Act of March 22d, 1877, P L. 16, declaring the claims for taxes for city, school, or poor purposes, and overdue water rents, in cities of the second class, filed in court, shall be liens on the real estate described therein, without regard to whether the owner is named therein or not, and that a judicial sale of such real estate shall vest a good title in the purchaser, are invalid, for the reason that they offend against the constitutional provisions that the General Assembly shall pass no local or special law authorizing the creation, extension, or impairing of liens, or prescribing the effect of judicial sales of real estate.[9] The question arose upon specifications of error to the rejection of the record of a tax lien, judgment thereon, execution, and sheriff's deed, under

which the defendant who offered the evidence, claimed. A verdict for the plaintiff was directed and judgment thereon was affirmed. The taxes in question were not assessed against the registered owner, nor against any one apparently connected with the title. The Act cited was again before the court in Commonwealth v. Macferron,[10] wherein it was said: "It is also contended that an Act relating to the collection of taxes in a given class of cities is local, and violates Article IX, Section 1, of the Constitution, which declares that all taxes shall be levied and collected under general laws, and we are asked to reverse the court below for this reason. We regard this question as already settled against the appellant. We have repeatedly held that the power to classify being conceded, the conclusion that an Act passed for a class was not a local law within the prohibition of the Constitution was irresistible. It may not be a general law in the same sense that one applicable to the Commonwealth at large is general, but it is general in another and strictly legal sense, since it embraces all the members of a class which the Legislature has created, without any violation of the fundamental law, and which is, therefore, a proper subject for legislation. Whether all the provisions of the Acts of 1874 and 1877 are constitutional is not our question. If any one of them is open to objection because of its attempt to change the law of liens, the rules of evidence, or the effect of a sheriff's sale, it will be quite time to consider such a question when we have before us a case that fairly raises it."

In McAskie's Appeal,[11] the court declined to consider whether the provisions of the Act of May 23d, 1889, P. L. 277, providing for the incorporation and government of cities of the third class, was valid in respect to Article III, page 280, relating to annexation of territory, because the proceedings involved in that case were not authorized by the provisions in question. The same provisions were in question in Harris's Appeal[12] and were sustained.

The Act of June 2d, 1881, P. L. 41, entitled "An Act to

make taxes assessed upon real estate a first lien, and to provide for the collection of such taxes, and a remedy for false return," which excepts from its provisions cities of the first, second, and fourth classes, and relates to taxes whether county, township, poor, school, or municipal, is invalid because it violates the constitutional provisions providing that no local or special law shall be passed "authorizing the creation, extension, or impairing of liens," "creating offices, prescribing the powers and duties of officers in counties, cities, boroughs, townships, election, or school districts." In this case,[13] Mr. Justice WILLIAMS, after referring to the constitutional provisions quoted, said: "Under the provisions of the Act of 1881 unpaid county, school, township, and poor taxes are collected in one way in the county of Philadelphia, and in a very different way in the other counties of the State. In the county of Allegheny the collection of unpaid county taxes falls under the Act of 1881 so far as the townships, boroughs, and cities of the third class are concerned. In the cities of Pittsburg and Allegheny they do not. Thus two different methods are in force within the limits of the same county for dealing with county, school, poor, and municipal taxes.

"This is so clearly in the face of the constitutional provisions referred to, and so destructive to that uniformity of procedure upon subjects of general interest, which it is the object of the Constitution to bring about and to preserve, that a single statement of the necessary consequences of the enforcement of the Act of 1881 renders an argument upon the constitutional question unnecessary."

[1]Philadelphia v. Haddington Church, 115 Pa. St. 291; 16 W. N. C. 331; 42 L. I. 287.

[2]Weinman v. Passenger Railway Company, 118 Pa. St. 192.

[3]In re Ruan Street, 132 Pa. St. 257; 24 W. N. C. 460; 25 W. N. C. 460.

[4]Wyoming Street, 137 Pa. St. 494; s. c., 27 W. N. C. 136.

An Act authorizing and directing councils of cities of the

second class to provide for the improvement of streets, lanes, alleys, and public highways, sewers, and sidewalks, requiring plans of streets, providing for the appointment of a board of viewers of street improvements, prescribing their duties, granting appeals to councils and court, providing for the assessment and collection of damages and benefits, authorizing the use of private property, and providing for filing liens and regulating proceedings thereon, and prohibiting the use of public streets without authority of councils.

[5]Straub v. Pittsburg, 138 Pa. St. 356; 38 P. L. J. 89.

[6]Pittsburg's Petition, 138 Pa. St. 401.

[7]Scranton v. Whyte, 148 Pa. St. 419.

[8]Reeves v. Philadelphia Traction Company, 152 Pa. St. 153; and see Watkins v. West Philadelphia Passenger Railway Company, 11 C. C. R. 648; s. c., 1 P. D. R. 463.

[9]Safe Deposit & Trust Company v. Fricke, 152 Pa. St. 231. The same Act was before the court in McKay v. Trainor, 152 Pa. St. 242, wherein the ruling in the foregoing case was applied; and see Bruce v. Pittsburg, 166 Pa. St. 152.

[10]Commonwealth v. Macferron, 152 Pa. St. 244.

[11]McAskie's Appeal, 154 Pa. St. 24.

[12]Harris's Appeal, 160 Pa. St. 494.

[13]Van Loon v. Engle, 171 Pa. St. 157.

In re Ruan Street, 24 W. N. C. 460, was first decided October 21st, 1889, in an opinion by Mr. Justice MITCHELL holding that the Act of May 6th, 1887, P. L. 87, was valid in so far as it related to the opening of streets, which was held to be a municipal function, and further holding the Act was not in violation of Article V, Section 26. The case was reargued January 6th, 1890, and the opinions on reargument are reported 132 Pa. St. 257, and 25 W. N. C. 349.

The final hearing was by a full bench. Mr. Justice CLARK and Mr. Justice MCCOLLUM concurred in the judgment, but dissented from so much of the opinion as sustained the validity of Sections 1 and 2 of the Act. Chief Justice PAXSON filed a dissenting opinion, with which Mr. Justice MITCHELL concurred, and in which, among other things, it

was said: "If, then, legislation for classified cities is neither local nor special, it does not come within the prohibition of Article III, Section 7, of the Constitution. It follows, logically, from this, as I view it, that it is for the Legislature to say what legislation is needed for a classified city, and that it is not a judicial question at all. This is a plain rule, easily understood, which leaves the Legislature free to enact such laws as the wants of classified cities require. Concede that it must be limited to matters affecting their government what can be more vital to the good government and welfare of a city, and to the material interests of its inhabitants, than the control of its streets? Why may not a classified city have the power to direct the opening of streets, and the assessment of the damages therefor? Must the damages for widening of Chestnut Street, which may amount to millions of dollars, be assessed precisely in the same manner as for the opening of a road in the hemlock forests of the Pocono Mountain? Why should we have an iron-clad, inflexible rule, which cannot be enforced without injury to the one section or the other, when neither section demands it, or would be benefited by it? In my opinion all that relates to the local affairs of the municipality, the control of its streets, its gas and water supply, its markets, and many other matters which might be mentioned, are proper subjects of municipal control, and may be safely left to such municipalities. As to all such matters, those communities can best govern themselves, and I do not think the Constitution prohibits, or was intended to prohibit, legislation conferring upon them such powers. If one class of cities desires certain regulations regarding its streets, or any other matter affecting the welfare of its inhabitants, why should it not have them, when no other community is objecting, or is injured thereby? And why should such regulations, if conferred upon one class of cities which desires them, be forced upon another class, or upon rural districts, which do not desire them, and to whose wants they are utterly unsuited? The answer, and the only answer to this is, we must have 'uniformity.' This is all very well, so far as the Constitution enjoins uniformity, but in my opinion neither that instrument, nor the common good and welfare of the people requires this principle to be carried to the extent claimed for it in the affairs of municipalities. It would be as reasonable to declare that all men should wear coats of the same size, whether they fit them or not.

"I am unable to see that the opinion of the majority of the court furnishes any fixed rule by which such legislation can be measured in the future. This particular case is decided, but if it furnishes a rule by which a lawyer can safely advise his clients in reference to future legislation, unless upon precisely similar facts, I fail to see it. If the legislation in regard to streets in the cities must be uniform with the rule in all other parts of the State, upon what subjects, and to what extent, may legislation be applied to classified cities? Until this question is answered specificially, I contend we have no rule at all. We have nothing but theories, and the most astute lawyer cannot safely pronounce an Act relating to classified cities constitutional, until after such Act has been passed upon by this court. In other words, the General Assembly may legislate for classified cities subject to the veto of this court. In my opinion it would be better to leave this whole subject to the wisdom of the Legislature, where, under the constitutional division of the powers of the government, it properly belongs."

In Shaaber v. Reading, 133 Pa. St. 653, the decision in Ruan Street (*supra*), was explained as follows:

"There is no constitutional question in this case, nor is there the slightest resemblance between it and the recent case of Ruan Street, 132 Pa. St. 257. In this case no question was raised over the exercise of any municipal power. The right of the cities of either class to discharge the functions of municipal government was freely conceded. Among these is the laying out of streets; the decision of the question when, for municipal purposes, their opening should take place; how they shall be paved, curbed, sewered, lighted. What was denied was the right of the Legislature to make the classification of cities the basis of legislation for them on subjects not relating to the organization or administration of their municipal governments, but to questions of public concern, such as the forms of procedure in the courts of the State; the rate of interest; exemption of property from levy and sale on legal process; the mode of proceeding to secure a citizen compensation for an entry on his property for public use by virtue of the right of eminent domain, and the like. In other words, we held that while the classification of cities authorizes all necessary legislation for them as cities, in the management of their municipal affairs, it does not make three separate States within the territorial limits of Pennsylvania, for each

of which there may be different laws, on subjects of a general character, from those in force in the rest of the Commonwealth. On the other hand, while cities may have the legislation needful to the proper regulation and discharge of all municipal powers, they are, under the Constitution, and they must remain, a part of the State of Pennsylvania, for all purposes not municipal, and subject to the laws of the State upon all subjects not of municipal concern. It is plain that no such question is involved in this case. Here the city of Reading seized and appropriated private property to public use. It went into the court of common pleas to give security and obtain an assessment of damages. This was exactly in accordance with the Act of 1874, and with the decision of this court in Spring Street (*supra*)."

The Act of May 6th, 1887, P. L. 87, in question in Ruan Street (*supra*), was entitled an Act relating to the opening and widening and assessments and payment of damages and benefits for the opening, widening, and changing of grade of streets in cities of the first class, and regulating the proceedings therein. The first and second sections of this Act were held to be valid as above stated. The first section made it the duty of viewers and reviewers appointed by the courts of quarter sessions of the Commonwealth in cities of the first class, to endeavor to procure release of damages in cases where they decided in favor of opening and widening of streets, and to assess the damages and benefits "where now authorized by law" and make report thereof to the court of quarter sessions "subject to appeal, review, or modification, as may be provided by existing laws." The second section provided that the courts of quarter sessions of the several counties of the Commonwealth should not have jurisdiction to order the opening or widening of any plotted street in any city of the first class, except upon the report of a jury of view, having performed all the duties prescribed by the first section of the Act, any local or special law to the contrary notwithstanding. The third and subsequent sections provided that whenever the courts of quarter sessions, having jurisdiction in cities of the first class, should appoint viewers, they should also appoint a reputable person, learned in the law and entitled to practice at the bar of the Supreme Court of this Commonwealth, who should preside at all meetings of the viewers, be known as a master, and have power to determine the admissibility of evidence, to issue writs of subpœna to com-

pel the attendance of witnesses, and the production of papers, and instruct the viewers upon matters of law, to which actions of said master exception might be taken for purposes of review by the court of quarter sessions and the Supreme Court. The master had no vote upon any question of fact or value. His compensation was to be fixed by the court and paid by the county. He was required to take an oath and to draft the report of the viewers, giving a statement of all facts in evidence, and all exceptions to the rulings or instructions. The appointment of a stenographer to make a record of and report the proceedings before the viewers was provided for. The court of quarter sessions having jurisdiction was empowered to regulate the details of procedure by general rules or special order. Property-owners injured were given the right to petition for the appointment of viewers, subject to appeal from their award and trial by jury. Registered owners and tenants were required to be notified of the appointment of viewers and time and place of meeting, and the failure of such to present claim for damages was to be a waiver of right thereto, proof of service having been made. Damages were to be assessed upon property benefited with right of appeal. The court was authorized to order streets to be opened notwithstanding the pendency of an appeal. A limitation of six years was fixed for the presentation of claims for damages. The last two sections of the Act were in the nature of saving clauses and clauses of repeal.

In the opinion below in Pittsburg's Petition (*supra*), his Honor, Judge SLAGLE, said: "It cannot be contended that each clause of Section 7, Article III, of the Constitution, creates a class as to which legislation must apply to all, and no legislation as to particular subjects will be allowable. For instance, the clause relating to ferries and bridges does not require that all legislation as to one must include the other. They are entirely different, and laws relating to one would be inappropriate to the other. So the clause relating to the practice and jurisdiction of courts does not require that the practice and jurisdiction of courts of record, aldermen, and justices of the peace shall be identical. They must be uniform in each class. It is equally clear that the clause relating to the affairs of counties, cities, townships, wards, boroughs, and school districts, recognizes them as distinct classes. Laws applicable to one would be absurdly inappropriate to another. All that is required is that laws shall apply to all of such class

and relate to affairs of that class, so that we may have one set of laws relating to counties, another to cities, etc. The same rule would therefore apply to the creation of offices in these several classes of municipal organizations and prescribing their duties.

"The same principle would lead to a proper construction of the provisions as to laying out, opening, altering, or maintaining roads, highways, streets, or alleys, and vacating roads, town plots, streets, or alleys. The words roads, highways, streets, and alleys do not refer to the same subject-matter, and these clauses do not require that the same law shall be applicable to all. It is true that these terms are sometimes used indiscriminately one for the other, but in common acceptance they have clearly defined distinctions. A road is defined to be ground appropriated for traveling, forming a communication between one city, town, or place and another; a street, a paved way or road, but in usage any way or road in a city; an alley, a narrow passage or way in a city as distinct from a public street; a highway a public road. These are the definitions given in Webster, and they are substantially the same as given by other authors. A highway, however, has a broader signification, including all public ways by land or by water, by foot, teams, or machinery. Railroads, canals, rivers, and bridges are highways as well as ordinary roads. In speaking of roads one might be understood as including streets (Sharett's Road, 8 Pa. St. 92); but, in using the word street or alley, it would not ordinarily be understood as referring to roads.

"Roads as thus understood are so essentially different from streets that they clearly require different proceedings in opening and maintaining them. The proceedings for opening public roads through country districts by petition setting forth the termini only, and leaving to viewers the determination of the route between these points, and the fixing the width by the court, would be clearly insufficient for the location and width of public streets and alleys. And the provisions for maintaining country roads by supervisors who should call upon the citizens to work out their road taxes would be an inadequate means of maintaining streets in a populous city. The Constitution should be construed in recognition of these distinctions, and therefore it must be held to authorize legislation as to the different classes of municipal bodies, and to authorize legislation as to roads and streets, both as

to their opening and maintenance. It will be found that the Supreme Court has not restricted but has enlarged this view, by recognizing the right to classify cities and counties for some of these purposes."

After reviewing Wheeler v. Philadelphia, 77 Pa. St. 338; Kilgore v. Magee, 85 Pa. St. 401; Ayars' Appeal, 122 Pa. St. 266; Reading City v. Savage, 120 Pa. St. 198; s. c., 124 Pa. St. 328; Philadelphia v. Haddington Church, 115 Pa. St. 291; Ruan Street, 132 Pa. St. 257; Shaaber v. Reading City, 133 Pa. St. 643, and Spring Street, 112 Pa. St. 258, the court continued:

"From these cases it appears that the power to lay out and open streets is a municipal function, but the assessment of damages for property taken must be by general law, because, as said in Ruan Street, 132 Pa. St. 257, 'The compensation due the property holder for an invasion of his close, under the right of eminent domain, is a subject as exclusively within the jurisdiction of these courts as an indictment for a crime or an action trespass *quare clausam fregit*. The only connection the city has or can have with such a proceeding is as a party to the litigation because liable to pay the damages assessed.'"

After stating the ruling in Wyoming Street (*supra*), he further said:

"Of course, this decision having been made in reference to the board of viewers, who made the assessment in the cases now in controversy, must be accepted as conclusive, and the assessment so made or threatened, and the filing of liens upon such assessment must be restrained, unless some other mode of assessment is authorized by law. But we are asked to go further, to declare void the Acts of June 14th, 1887, P. L. 395, and May 16th, 1889, P. L. 228, and restrain further prosecution of the improvements. It will, therefore, be necessary to further consider the effect of this decision.

"It was clearly not intended to question or modify the rulings previously given by the court in the opinion delivered by the same justice in Ruan Street, and Shaaber v. Reading City. In them we find, as one of the recognized municipal functions and a proper subject of classified legislation, the paving and grading of public streets; and sewers would certainly come within the same ruling: Fisher v. Harrisburg, 2 Gr. 291. This being the case, it would follow that the cost and expense of such improvements could properly be pro-

vided for by the same means. They have always been treated as proper municipal charges and the proper subject for local assessment upon properties benefited, either by foot-front or actual benefit, and this both before and since the new Constitution. It was provided for boroughs in the general borough Act of 1851, and for cities of the third class by the Act of 1874; and such assessments have been sustained in numerous decisions as late as Harrisburg v. McCormick, 129 Pa. St. 213. It would, therefore, seem to be the proper subject for classified legislation as an incident to the improvement of municipal streets. These assessments have usually been made by corporate officers, as in case of street grading in boroughs, or by viewers appointed by councils, as in the case of cities of the third class, and many cities acting under special charters before the adoption of the new Constitution. We know of no case in which it has been held that such assessments must be made by viewers appointed by the court. Such assessments differ essentially from those for damages by taking or injuring of property. The last depend upon the right of eminent domain, while the others depend upon the taxing power: Wolf v. Philadelphia, 105 Pa. St. 25; Michener v. Philadelphia, 118 Pa. St. 535.

"It is, therefore, not probable that it was intended to hold that municipal corporations are required to resort to the courts for assessment of benefits to pay the cost of municipal improvements. It is not so expressed. We therefore conclude that the clause of Article III, to which Justice WILLIAMS refers, is that relating to judicial proceedings, and the clause of the Bill of Rights which he regards as violated, Section 11, which provides that 'All courts shall be open, and every man for an injury done him in lands, goods, person, or reputation shall have remedy by due course of law.' The first is violated by the special proceedings as to the collection of liens, and the last by the fact that appeals are restricted to one court, and the other provisions which are regarded as unusual and despotic.

"Some of the objectionable features of the Act of 1887 have been eliminated by the Act of 1889, but the same general system is retained and the same board of viewers authorized to make assessments, so that if one falls the other will fall with it. Without making any special reference to the various provisions of the Act, an examination will show that each and every power is so dependent upon that for the assessment of

benefits that no consistent result can be worked out without it. We must, therefore, hold that the entire Acts of 1887 and 1889 are unconstitutional and void."

This subject may be further illustrated by an extract from an opinion of his Honor, Judge ARCHBALD, in passing upon a claim for city taxes of the city of Scranton to a fund for distribution in the case of Smith v. Meadow Brook Brewing Company, 3 Lack. Jur. 154, where he said: "The final question relates to the city taxes proper, and we turn for its solution to the Act of May 23d, 1889, P. L. 277, entitled 'An Act providing for the incorporation and government of cities of the third class.' Section 11, of Article XV, of said Act—already quoted—declares that 'all taxes assessed upon real estate shall be and continue to be liens thereon from the date of the levy thereof until paid.' The prior part of the section which directs that unpaid city taxes, returned to the treasurer, shall be certified to the city solicitor, and by him be registered in the prothonotary's office, does not affect the absolute lien which is thus given, nor make it dependent upon registry. In this respect there is a marked difference from the provisions with regard to school taxes in the Act of 1874, which we have just been considering. The twelfth section of the same article goes on to declare that 'the lien of said taxes shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, or obligation, lien or responsibility, which the said real estate may become charged with or liable to, and shall not be divested by any judicial sale, except for so much of the proceeds of such sale as shall be actually applied thereto.' These enactments create in cities of the third class a lien for taxes which is indefinite in extent, of absolute priority, and indivestible until actually paid. The question naturally arises whether this or any part of it is legitimate with regard to cities of the third class, to which the Act wherein it is found is confined. It is said by Mr. Justice MITCHELL in Philadelphia v. Kates, 150 Pa. St. 30, with regard to a similar provision in the Act of April 16th, 1879, Section 5, P. L. 26, relating to the lien of taxes in cities of the first class: 'The Act of 1879 is extremely harsh. It not only gives an indefinite lien which is contrary to the whole spirit of our lien laws, but if its terms be taken literally it makes the whole discharge depend upon the fact of distribution of a fund, for the ascertainment of which there is no adequate provision, and which after a few years and the change of sheriffs

and tax receivers becomes of great practical difficulty. There is another feature of it still more serious in the doubt how far a perpetual lien for taxes in cities of the first class might be consistent with the provisions of Article III, Section 7, of the Constitution, prohibiting local or special laws authorizing the creation, extension, or impairing of liens.' The doubt which is thus expressed does not, however, amount to a real decision, so as to materially aid us in deciding the question propounded. In Safe Deposit Company v. Fricke, 152 Pa. St. 231, we have something which comes much closer to doing so. The point there under consideration was presented by the Act of March 22d, 1877, P. L. 16, relating to the collection of taxes and water rents in cities of the second class. The eleventh and twelfth sections of this Act are as follows: 'Section 11. All taxes and water rents levied for any purpose in cities of the class aforesaid shall remain liens until fully paid and satisfied, and shall not be divested by any judicial sale except to the extent to which distribution shall be made out of the proceeds of such sale. Section 12. All taxes and water rents filed as liens in default of payment shall be liens on the real estate whether the real owner is named or not, and a sale upon the same as against the party assessed shall vest a good title in the purchaser thereof.' With regard to the last of these two sections, Mr. Justice STERRETT, in the decision quoted, says: 'In view of the foregoing authorities and the principles clearly established by them, how can it be successfully claimed that Section 12 of the Act of 1877 is within the recognized scope of valid legislation for cities of the second class? It certainly does not relate to the exercise of any corporate power of such cities nor to the number, character, powers, and duties of any municipal officer thereof, nor to any subject under the control of city government. On the contrary, it relates to claims for overdue taxes and water rents filed in the courts of Allegheny County, and under the guise of legislating for cities of the second class, it undertakes to declare that such claims shall be liens on the real estate described therein without regard to whether the owner is named therein or not; and further, that a judicial sale of said real estate on such lien shall have the effect of vesting a good title thereto in the purchaser. It thus undertakes to prescribe a rule of law for the guidance of the judges of said courts. If the section is constitutional, they are bound to declare as matter of law that such claims are liens, and that a sale by virtue

of their process thereon, invests the purchaser with the title of the real owner of the land notwithstanding he may have fully complied with the law of said city, requiring registration of his property. . . On principle, therefore, as well as authority, we think the section referred to is unconstitutional and void, for the reason that it offends against those clauses in Section 7, of Article III (*supra*), which declare the General Assembly shall pass no local or special law "authorizing the creation, extension, or impairing of liens" . . . or "prescribing the effect of judicial sales of real estate." ' This is a clear and conclusive opinion, and I have quoted from it at length, in order to show the exact grounds upon which the legislation in question was declared unconstitutional. It may be claimed that it is not wholly in point with the present case because we have no exactly similar provisions in the statute before us, but on principle it is difficult to see why it does not equally condemn not only the eleventh section of the same Act, and the fifth section of the Act of 1879, upon which such doubt is cast by Judge MITCHELL in Philadelphia v. Kates (*supra*), but with them also the very provisions of the Act of 1889, which we have here to pass upon. In each of these Acts we have special and peculiar legislation creating liens, and giving them such characteristics in each class of cities legislated for as the General Assembly has at the time thought best. It is true that city taxes are a municipal subject, and so, as it would seem, is the collection and enforcement of them against the property assessed. Moreover, the three Acts quoted have provisions sufficiently similar to bring the lien of taxes in the several classes of cities into a certain line of uniformity. Why, then, it may be asked, can not such legislation be sustained? The matter of uniformity would seem to have little to do with the question. The very purpose of class legislation is to allow of diversity. It is permitted not on the ground that it produces uniformity, but where, in the very face of that, it does not. The lien of city taxes therefore, if a legitimate subject of such legislation, may be dealt with in one way in cities of one class, and in a distinct and entirely different way in each of the other two classes. A uniformity at any time by chance existing may at any subsequent time be completely overturned. Cities of the first class are not to-day in line with the others on this subject, if, as was held in Philadelphia v. Kates, 150 Pa. St. 30, the Act of 1879 has been supplanted by the later Act of

April 19th, 1883, P. L. 9. Moreover, an Act which is otherwise local and special is not relieved from this vice simply because it happens to bring about a uniformity of the law. This was expressly decided in City of Scranton v. Silkman, 113 Pa. St. 191. Apparently, therefore, we are in this dilemma: if such legislation is permitted we may have one character of municipal lien created in one class of cities, and another in another, and thus offend against the Constitution, and on the other hand, if it is not permitted, we reject a legitimate subject of municipal legislation. Let us see how far a solution of these difficulties is afforded by the case of the City of Scranton v. Whyte, 148 Pa. St. 419, which is almost as recent a deliverance of the Supreme Court as Safe Deposit Company v. Fricke. The question there under consideration was the constitutionality of those provisions of the Act of 1889—now under discussion—which relate to the lien and collection of municipal assessments for paving, etc., in cities of the third class: Act of May 23d, 1889, Article XV, Sections 21 to 31, inclusive, P. L. 323-327. Upon this subject Mr. Justice WILLIAMS, speaking for the Supreme Court, says: 'Classification of cities for purposes of municipal government was recognized as valid in Wheeler v. Philadelphia, 77 Pa. St. 338. Laws limited in their operation to a single class of cities are not therefore within the constitutional prohibition of local legislation, if they relate to matters that are connected with the organization or the administration of the city government or the regulation of municipal affairs. .If such laws relate to other subjects not within the purposes of classification they fall within the prohibition and are void.

This is, therefore, the test by which to determine the validity of a law relating to a given class of cities. If it relates to subjects of municipal concern only, it is constitutional, because operating upon all the members of the class it is a general law. . . Tried by this test the Act of 1889 is in its character and effect a general law, and must be regarded as constitutional, except as to such particular provisions, if any as transcend the limits imposed by its title, or fail to bear the test to which we have referred. The subject of the grading and the paving of streets is clearly and exclusively one for municipal control. The power to collect the cost of the work so done by any appropriate form of taxation is a municipal power. In the case of an original pavement the right to assess the cost of the work on property along the street paved

was possessed by the cities of the Commonwealth under their several charters before the Constitution of 1873 was adopted or any attempt at classification, as now understood, had been made. The mere fact of classification did not strip the classified cities of their powers. . . . The Act of 1889 regulates the manner in which the power to pave streets and collect the cost thereof, shall be exercised, and authorizes the assessment of the cost upon property fronting on the street according to the extent of the frontage. So far the Act is certainly free from objection. . . . But some provision must be made for the collection of the assessment, and the Act authorizes the entry of a municipal lien for the amount if not paid when due. This is the method provided for collecting similar assessments in cities of the first and of the second classes. It is not the introduction of a new, but the adoption of an old and well-understood mode of procedure to secure the city and give notice of the incumbrance. So much of the article as gives a lien for ten years without a revival may be open to criticism, but the question is not raised on this record. For the usual period fixed for the duration of liens appearing by the records of the courts this lien is certainly good, if there was authority to enter it in the first place.' The conclusion finally reached in the case is summed up (page 428) as follows: 'The Act of 1889 provides for the ascertainment of damages and the assessment of benefits by a system in harmony with that in cities of the first and second classes. Its provisions authorizing the filing of a municipal lien for unpaid assessments and the collection of the amount so secured by means of a personal action or a writ of *scire facias* are not diverse from those in force in other cities but in harmony with them. They do not change the established modes of procedure in the courts of law, or the rules of evidence. They create no new style of liens, they change no settled rule of property. The court below was, therefore, in error in holding the Act to be unconstitutional.'

"I must confess that I cannot fully understand all the positions taken in this opinion, nor altogether reconcile them with one another. There seems to be some confusion in asserting that municipal assesments are the legitimate subject of class legislation, thus recognizing the right to a diversity therein, and at the same time apparently attempting to justify the legislation which we have on the subject in cities of one class on the ground of its being in harmony with that which exists

in the other two. Nor is it altogether easy to square this decision with the ruling made in Safe Deposit Company v. Fricke (*supra*). If we may deal with the subject of liens for municipal assessments or taxes by classification, why may we not deal with it thoroughly and specially for each class? And yet it is plainly decided in the latter case that we cannot. But without dwelling upon the possible conflict in these cases and taking them as they stand, let us see to what conclusions they bring us in the case in hand. If it is legitimate, in any Act relating to cities of a specified class, to provide for the enforcement of paving assessments by making them liens on the properties affected thereby, it certainly is to provide for the collection of taxes in the same manner. The levying of taxes for city purposes is one of the most essential of municipal functions, and in dealing with the matter of its exercise the Legislature cannot stop short of providing an effective system. If this involves the making of such taxes a lien on the properties against which they are respectively levied, a provision to that effect becomes an entirely proper and legitimate part of such legislation. So far, therefore, as the Act of 1889, relating to cities of the third class, undertakes to declare that city taxes shall be a lien therein, it is a valid constitutional enactment. But this does not deal with the whole of our problem, we are required to go further and uphold the priority of lien which is given by the statute. Can this also be done? I do not see why on principle it may not. If the Legislature deem it necessary to the effective collection of such taxes to declare that they shall be first liens on the properties affected, this is just as legitimate as to say that they shall be liens at all. This does not—if we may use this double line of argument—create any new style of lien, but on the contrary it merely extends to cities of this class, what has long been in vogue in both the other classes. How far we may go beyond this and sustain the perpetuity of lien which is given by the statute is another question. We are warned by what is decided in Safe Deposit Company v. Fricke (*supra*), as well as by what is said in the other cases on this subject, that here, perhaps, we cross the line. It may seem to be standing on narrow and arbitrary grounds to hold that the lien of taxes as thus legislated for is good in one direction and not in another, but this it would hardly be useful to further discuss. Taking the law as it is laid down in City of Scranton v. Whyte, I cannot do otherwise than hold that the provis-

ions of the Act of 1889 under consideration are valid, and the taxes in question are first liens, and must therefore be paid with their penalties out of the fund. The remaining exceptions are overruled and the report of the auditor confirmed."

And see Jermyn v. Scranton, 3 Lack. Leg. News, 112, and *infra*, under title Local Affairs of Political Subdivisions of the State.

The case of Scranton v. Whyte illustrates a point of difficulty, the explanation of which tends to show the unity of the subject of this volume, and to suggest an application of what has been said heretofore upon the subject of enactment by reference. The draftsman of the Act of 1889, in question in that case, was dealing with the subject of municipal liens for assessments for benefits under the foot-front rule; a kind of lien distinctively municipal, hardly to be conceived of as legally capable of existing outside of a municipality, or in relation to anything else than an improved municipal highway. He provided for the creation of a statutory lien, for there was none at common law. The lien was also statutory as distinguished from judicial, if the expression may be allowed, because it derived its force from the terms of the statute and not from the effect of a judgment. The lien was possibly capable of enforcement without resort to judicial process, because in the exercise of the taxing power due process of law may be applied for the collection of a tax independently of strictly judicial procedure. But such proceedings are not favored in law, their application is usually inconvenient, and their regulation, in such manner as to be free from constitutional objection, difficult. Hence the draftsman of the Act of 1889 undertook to provide a judicial remedy, and here the difficulty referred to was encountered. The situation may be illustrated by legal conditions either real or hypothetical. He deemed a provision that such lien should be enforced in like manner, and by like judicial proceedings, as other municipal liens were enforced under existing laws, to be unsafe, in view of the provision of Article III, Section 6. He could not adopt, amend, and re-enact at length the existing provisions of law, if such there were, governing the general subject of municipal liens, because his bill would then be incongruous and relate to more than one subject. He could take up such supposed existing statutory provisions governing the general subject, and prepare a separate bill so revised and amended as to cover his case, and thus bring the whole subject before

the Legislature, expose it to other revisions and amendments, with the risk of failure on final passage or of expiration of the legislative session before enactment, and thus institute a practice of legislation tending to the unsettlement of the law; or he could take up the different laws relating to the subject, one by one, and deftly graft them with amendments unobjectionable in form, and sufficient in number to properly modify the existing laws without unsettling the system, and start his brood of little bills out on their perilous way. As a choice of evils he made independent provisions, which were not inclusive of the class of liens with which he had to do, but which were inclusive of the class of cities to which the Act related, and thus encountered the difficulties pointed out in the principal case, and in that of Smith v. Meadow Brook Brewing Company. The subject of enactment by reference, and the provision as to titles of Acts of Assembly, are thus shown to have an intimate relation to the subject of local and special legislation, and to the rule which permits legislation for classes of subjects, including classes of cities.

12. What are Municipal Matters Proper and What are Not.

Three clauses of Article III, Section 7, specifically relate to cities. They declare that the General Assembly shall not pass any local or special law regulating the affairs of cities, incorporating cities, or changing their charters, creating offices, or prescribing the powers and duties of officers in cities.

These provisions have been so construed as to permit a classification of cities in a division of three classes, and to permit legislation relating to each class, that is, to the affairs of cities of each class, to their incorporation or the change of their charters, and to the creation of offices, and the prescribing the powers and duties of officers in each of the three classes of cities.

Certain statutes have been enacted, based in form upon this recognized classification of cities, which have been declared invalid because not within the principle which permits and sustains legislation for cities by classes.

The cases passing upon the validity of this kind of legislation have furnished two tests of its validity, the one positive and the other negative, as follows: Such legislation "must be applicable to all the members of the class to which it relates, and must be directed to the existence and regulation of municipal powers and to matters of local government," or, as the same thought is otherwise expressed, "such legislation must make provision for the administration of corporate powers and relate to the number, character, powers, and duties of corporate officers in cities." The negative test is thus stated: "All legislation remains forbidden to cities, notwithstanding classification, if it does not relate to the exercise of corporate powers, or to corporate officers, and their powers and duties. Laws relating to the several subjects in Section 7 must be general affecting the whole State, so that the rule upon this subject shall be uniform throughout the territory upon which the Constitution is operative. For example, there cannot be one rate of interest in cities of the first class, another in those of the second or third, and still another for the rest of the State, but the rate when fixed by law must apply to all parts and divisions of the State alike. The same is true of the law of descent, and so on through the entire list of subjects upon which local and special legislation is forbidden. If classification can relieve against the constitutional provision as to one of these subjects it can relieve as to all."

The present inquiry relates to the application of these tests with a view to furnishing suggestion as to the solution of the question as to what legislation may, and what does not, relate to municipal affairs.

As related to this topic the provisions of Article III, Section 7, may be divided into three classes: First, those in which municipal affairs are directly referred to and in which special or local laws are prohibited, viz., laws "regulating the affairs of counties, cities, townships, wards, or school districts," "incorporating cities, towns, or villages, or changing their charters," "creating offices or prescribing the powers

and duties of officers in counties, cities, boroughs, townships, election, or school districts." The provisions in this class are covered by what has been already said.

The second class of subjects enumerated in Article III, Section 7, are such as can have no relation to municipal affairs, either because of their subject-matter, or because of their relation to persons or bodies corporate, other than cities. The clauses referred to are those wherein local or special laws are prohibited, "regulating the affairs of counties, townships, wards, boroughs, or school districts; changing the names of persons or places; changing the venue in civil or criminal cases; authorizing the adoption or legitimation of children; locating or changing county seats; erecting new counties or changing county lines; granting divorces; erecting new townships or boroughs; changing township lines, borough limits, or school districts; creating offices, or prescribing the powers and duties of officers in counties, boroughs, township, election, or school districts; changing the law of descent or succession; regulating the practice or jurisdiction of, or changing the rules of evidence in, any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery, or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate; regulating the fees or extending the powers and duties of aldermen, justices of the peace, magistrates, or constables; regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes; affecting the estates of minors or persons under disability, except after due notice to all parties in interest to be recited in the special enactment; remitting fines, penalties, and forfeitures, or refunding moneys legally paid in the treasury; regulating labor, trade, mining, or manufacturing; creating corporations, or amending, renewing, or extending the charters thereof; granting to any corporation, association, or individual any

special or exclusive privilege or immunity or to any corporation, association, or individual the right to lay down a railroad track." In connection with these provisions, Article V, Section 26, relating to uniformity of laws governing courts may be referred to.

The third class of subjects named in Article III, Section 7, are such as may have relation to municipal matters or not, according to circumstances. They are embraced in those clauses in which the passage of local or special laws is prohibited, "authorizing the creation, extension, or impairing of liens; authorizing the laying out, altering, or maintaining roads, highways, streets, or alleys; relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State; vacating roads, town plats, streets, or alleys; relating to cemeteries, graveyards, or public grounds not of the State; for the opening and conducting of elections, or fixing or changing the place of voting; fixing the rate of interest; exempting property from taxation." The provisions of Article VIII, Section 7, requiring uniformity of election laws, and those of Article IX, Section 1, requiring taxes to be levied and collected under general laws may be referred to in this connection.

In explanation of the last classification it may be said that laws authorizing the creation, extension, or impairing of liens, and more particularly those relating to their creation, may have reference to municipal liens, or to other liens, as, for example, mechanics' liens or judgment liens. Legislation as to the latter would have reference to non-municipal affairs, legislation as to the former would have relation to municipal affairs. Laws authorizing the laying out, opening, or maintaining of roads, highways, streets, or alleys may have relation to municipal highways or to non-municipal highways. Streets and alleys are peculiarly municipal highways, and laws authorizing the laying out, opening, altering, or maintaining municipal highways, which would include their grading,

curbing, paving, and draining, would relate to municipal affairs. A law authorizing municipalities to maintain free public ferries or bridges would relate to municipal affairs, but one relating to the incorporation of ferry or bridge companies or to ferries and bridges, non-municipal, would not relate to municipal affairs. A law vacating a specific road, town plat, street, or alley, would be local and special, but provisions authorizing municipalities to institute proceedings to vacate roads, town plats, streets, or alleys would relate to municipal affairs. A law relating to a given cemetery, graveyard, or other public ground not of the State, would be local and special, but laws relating to parks, public squares, cemeteries, and graveyards in cities, especially with regard to the exercise of police powers over the latter, would relate to municipal affairs. Election laws must be general and uniform, but the regulation of municipal elections is a municipal affair. Laws fixing the rate of interest, in the sense of defining the liability of the party in default by reason of the non-payment of money when due, must be uniform, but a provision which, for example, might limit the borrowing powers of municipalities by prescribing a rate of interest payable by them less than the ordinary rate, would be a municipal affair, so far as it governed the rate to be paid before the municipality was in default. Taxes are required to be levied and collected under general laws, but taxation for the support of municipal governments is a municipal affair. Exemption from taxation is not, in general, a municipal affair, but a law which exempted property from municipal taxation but not from other, the property being of a kind that is permitted to be exempted, would relate to a municipal affair. These statements as to what are municipal affairs are made provisionally and as propositions of fact.

As to the matters in the second class, it is clear that county, township, borough, or school district affairs are distinct from city affairs. The school district may be coterminous with the city, but the law, as a rule, separated the two corpora-

tions before the adoption of the Constitution, and the constitutional enumeration of them as distinct classes separates them now. The ward may be a subdivision of a city or a borough, but city wards must be regulated by the law which relates to all the wards of all the cities of a given class. Townships and boroughs lie outside of cities, and there can be no confusion as to the affairs of these. Cities are within the body of a county. County affairs relate to the whole county, including all of its subdivisions, whether city, borough, or township. These affairs are naturally separate from city affairs, although there may be instances where an officer of one of these corporations is charged with duties which pertain to another, as in like manner some county officers may be charged with duties which pertain to State affairs. Changing the names of persons or places, venue, adoption, county seats and county lines, divorces, descent and succession, are so clearly unrelated to municipal affairs as to pass without comment, and so are the provisions as to minors or persons under disability, fines, penalties, and forfeitures, if treasury means treasury of the State or county, and as to special privileges and immunities. Regulation of labor, trade, mining, or manufacturing, which is prohibited, probably was not intended to exclude such local and municipal police regulations by boroughs and cities as may be authorized by law to be made by them, and which relate to the safety, health, and comfort of thickly settled communities. It is clear that the creation of corporations, or amending, renewing, or extending their charters, is a matter having no more relation to city lines or affairs than it has to county lines or affairs. The remaining provision in this class from the seventh section has relation to judicial matters. Here again it is clear that the city, whether as creditor or debtor, *tort-feasor*, or party injured, or as vested with the power of eminent domain, as public and *quasi* public corporations are, has, and can have, no special or peculiar privileges under the law which may distinguish a city from any other party or litigant. A city, a mechanic, a livery-stable

keeper, a borough, a pawn-broker, a mortgagee, or a pledgee may have liens upon property real or personal, but when the judicial power is invoked, the enforcement of these liens must be governed by the constitutional provisions relating to the jurisdiction, practice, rules of evidence, and process of the courts. Remedies must be governed by uniform rules relating to the remedy as such, and not to the person of the claimant. Each class of liens may have its usual and regular method of procedure not varied except by those peculiarities which spring from the nature of the lien itself, as defined by the common law, or by the statute which creates or regulates it.

It is believed that the foregoing is in harmony with the decided cases; thus the cases relating to subjects within the second class as above pointed out, are Commonwealth v. Reynolds, and Chalfant v. Edwards, wherein school affairs are distinguished from municipal affairs: Philadelphia v. Haddington Church, Ruan Street, Wyoming Street, Pittsburg's Petition, Safe Deposit & Trust Company v. Fricke, and McKay v. Trainor, wherein it is shown that the municipality cannot be granted a peculiar jurisdiction, practice, procedure, or process as a party litigant in a judicial proceeding, whether in the exercise of the power of eminent domain or otherwise, or as plaintiff in a judgment or execution. Weinman v. Passenger Railway Company pointed out that the creating of corporations, including the amending, renewing, or extending of their charters, cannot be legislated for with reference to municipal boundaries or classes of cities. On the other hand, and with reference to subjects within the third class, wherein the terms of prohibition are general, and large enough to include municipal affairs in common with others, it appears that the suggested distinction has prevailed. Thus, in Scranton v. Whyte, a municipal lien for paving a certain street in front of the defendant's premises in the city of Scranton was held to be valid as such, while certain provisions in regard to the procedure for its enforcement, objected to

as falling within the second class of subjects above referred to, were not passed upon. This case is direct authority for the proposition that the subject of the grading and paving of streets is clearly and exclusively one for municipal control, and that the power to collect the cost of the work so done in some appropriate form of taxation is a municipal power, and that the Act of 1889, relating to cities of the third class, which regulates the manner in which the power to pave streets and collect the cost thereof shall be exercised, and authorizes the assessment of the cost upon property fronting on the street according to the extent of the frontage, and which gives a lien for such assessment, is, to that extent, free from objection. Shaaber v. Reading, which explains Ruan Street, shows that the laying out of highways and the decision of the questions when their opening shall take place, and how they shall be paved, sewered, and lighted, are functions of municipal government.

In Commonwealth v. Macferron, general municipal taxation was held to be a municipal affair, and that the city of Allegheny, having come into the second class of cities, was subject to the provisions of the Act of March 22d, 1877, P. L. 16, notwithstanding the invalidity of some of its provisions, as decided at the same time in the cases of Safe Deposit & Trust Company v. Fricke, and McKay v. Trainor. It was contended in Commonwealth v. Macferron that an Act relating to the collection of taxes in a given class of cities is local and violates Article IX, Section 1, of the Constitution, which declares that all taxes shall be levied and collected under general laws. That question was regarded as already settled against the appellant. It was said that it had been repeatedly held that the power to classify being conceded, the conclusion that an Act passed for a class was not a local law was irresistible, that it might not be a general law in the same sense that one applicable to the Commonwealth at large is general, but that it was general in another and strictly legal sense, since it embraced all the members of a class which the

Legislature had created without any violation of the fundamental law. Reeves v. Traction Company relates to a matter not within the subjects enumerated in class three. It relates to the exercise of police power in the regulation of the movement of vehicles on streets. Harris's Appeal in like manner relates to annexation of territory, and Straub v. Pittsburg to the relief and support of the poor and the regulation of the holding and conveyance of property in connection with that function.

The foregoing are the cases of direct application decided in the Supreme Court. An examination of those decided in the lower courts which have not been appealed will show that they also, as a rule, are in harmony with the foregoing.

From the foregoing review of the authorities, it will appear that certain matters stated to be municipal as matters of fact have been so determined to be as matters of law. Municipal liens, municipal highways, so far as their laying out, the institution of proceedings for their opening, and their maintenance by grading and paving is involved, and municipal taxation, are, under the decided cases, as matters of law, municipal affairs within the explanation given of the subjects of constitutional prohibition classified within the third class above. As to the remaining instances within that class, the authorities thus far are silent, and thus are indicated the questions to be definitely settled hereafter, but these questions are near solution if the decided instances may be regarded as furnishing the principle upon which they are to be determined.

As to the broad and general question what are municipal affairs and what not, it may be said that it is difficult to formulate a comprehensive definition, the answer must rather be sought from enumeration, and this must be determined practically and historically, and not even then definitely, because municipal corporations must keep abreast with the progress and improvements of the age, and their powers must be modified or enlarged in conformity therewith: Linn v. Chambersburg Borough, 160 Pa. St. 511. It may be well, however,

to examine in this connection the general borough law of 1851, with its amendments prior to 1874, for the purpose of illustrating, by the only general and comprehensive municipal law then existing, what were regarded as municipal affairs when the Constitution was adopted.

The general borough law regulates the procedure for the incorporation of boroughs, it regulates the conduct of borough elections subject to the provisions of the general election laws, it names the officers to be elected as corporate officers, including the election officers, the borough constable, and the overseers of the poor, it defines the powers and duties of the borough officers, including the burgess, councilmen, treasurer, and secretary, tax collector, and high constable. The municipal powers are, among others, to have succession; to sue and defend; to make and use a common seal; to hold, purchase, and convey real estate; to make such ordinances, by-laws, and regulations, not inconsistent with law, as may be deemed necessary for the good order and government of the borough; to survey, lay out, enact, and ordain such roads, streets, lanes, alleys, courts, and common sewers as may be deemed necessary, and provide for, enact, and ordain the widening and straightening of the same; to regulate the roads, streets, lanes, alleys, courts, common sewers, public squares, common grounds, foot-walks, pavements, gutters, culverts, and drains, and the heights, grades, widths, slopes, and forms thereof, with all other needful jurisdiction over the same. To regulate and direct the grading, curbing, paving, and guttering of the said foot-walks, by the owner or owners of the lots of ground respectively fronting thereon, in accordance with the general regulations prescribed, or cause the same to be done on failure of the owners thereof, and to collect the cost of the work and materials with 20 per cent. advance thereon, as claims are by law recoverable under the provisions of the law relative to mechanics' liens; to make all needful regulations respecting the foundations and party-walls of buildings, and respecting vaults, cess-pools, sinks,

drains, and partition fences; to enter upon lands and premises for the purposes authorized by the Act; to prohibit and otherwise regulate the running at large of certain animals; to regulate markets, hawking and peddling, and the inspection and measurement and weight of cord wood, hay, coal, and other articles sold or offered for sale in the borough; to regulate annually the scales, weights, and measures within the borough according to the standard of the Commonwealth; to prohibit and remove nuisances; and the carrying on of any manufacture, trade, or business which may be noxious or offensive to the inhabitants; and to regulate other matters noxious or dangerous; to prohibit interments wholly or within partial limits, and to prescribe and regulate the depth of graves; to make such other regulations as may be necessary for the health and cleanliness of the borough; to establish a fire department; to regulate or prohibit plays, shows, and other exhibitions; to establish a nightly watch; to light the streets, to supply water for the use of the inhabitants, and to regulate the same; to impose fines and penalties; to appoint and remove such officers, prescribe their duties, and allow them such compensation as may be deemed necessary to secure the peace, order, and well-being of the inhabitants, and to enforce the ordinances and regulations of the borough. To prescribe fees for official service in the adjustment of the grades, curbs, lines, party-walls, partition fences, and the like; to levy and collect annually, for borough purposes, a tax not exceeding one-half per cent. on the dollar, on the valuation assessed for county purposes, as then or thereafter prescribed, upon all property, offices, professions, and persons made taxable by the laws of the Commonwealth for county rates and levies; to tax dogs, and to borrow money; with a limitation of rate of interest conforming to the general rate; and with the power of eminent domain to be exercised according to the laws of the Commonwealth.

From the foregoing enumeration it appears, that when the Constitution was adopted the following subjects included

within class three above of the subjects of constitutional provision in Article III, Section 7, were regarded as municipal affairs, and were regulated by the general borough law, to wit, the creation of municipal liens; the laying out, altering, or maintaining municipal roads, highways, streets, and alleys; the regulation of cemeteries, graveyards, and public grounds not of the State within municipalities; the conducting of municipal elections; fixing the rates of interest to be paid by municipalities and the levy and collection of taxes for municipal purposes; thus covering the municipal aspect of substantially all of the subjects enumerated in class three. It has never been doubted that laws relating to such matters, governing the boroughs of the Commonwealth, were general laws. If this be so, then laws relating to such matters, governing all the cities of the Commonwealth, would be general laws, and if so, then any matter regulated by a law applicable to boroughs or cities, may be regulated by a law applicable to a class of cities.

13. Acts of Assembly Void in Part.

It is a rule of general application that an Act of Assembly containing provisions contrary to the Constitution may be sustained as valid in part, the invalid provisions being rejected. Many of the cases, as has been incidentally shown, have declared various statutes to be utterly void. In other cases statutes have been sustained in so far as they were involved in the question in controversy, when afterwards, other provisions being in question, these provisions have been held to be invalid; in other cases statutes have been held to be valid in part and void in part. For example, in Ayars' Appeal,[1] the Acts of 1876 and 1887 were held to be entirely void, and so in Frost v. Cherry,[2] as to the Act of 1885. In the case of Ruan Street,[3] a majority of the court held the first and second sections to be valid because they repealed an existing local system, and so far made the general system operative; two of the justices concurring in the judgment dissented from

so much of the opinion as sustained the validity of the first and second sections of the Act. In Kilgore v. Magee,[4] the validity of the Act of March 22d, 1877, P. L. 16, was sustained in so far as questioned in the points made in the argument, but in the subsequent cases of Safe Deposit & Trust Company v. Fricke,[5] and Pittsburg v. Hughes,[6] the eleventh and twelfth sections of the Act were held invalid. In Wyoming Street,[7] the decision was adverse to the validity of the sections of the Act of 1887 relating to boards of viewers in cities of the second class. In the subsequent case of Pittsburg's Petition,[8] an attempt was unsuccessfully made to sustain the Acts of 1887 and 1889 in part, the latter partaking in the vice of the former, but the attempt failed because the objectionable features were so interwoven with the whole texture of the Acts in question as to be indispensable to their operation. In Simon's Case,[9] and Betz v. Philadelphia,[10] different parts of the Act of 1885, known as the "Bullitt Bill," were held invalid, and in Gaston v. Graham,[11] the forty-first section of the oft-litigated Act of May 23d, 1874, dividing cities into three classes was declared void. In Meadville v. Dickson,[12] it was said, referring to the Act of May 24th, 1887, P. L. 204, containing legislation for cities of the third, fourth, and fifth classes, that as there were no cities of the fourth and fifth classes, it could not be said that the Legislature would have passed the Act with cities of the fourth and fifth classes eliminated, save on the supposition that such classification ought not to have been made. In Pittsburg's Petition the court below referred to the rule that where a part of an Act is void the remainder may be enforced unless the parts are so essential to each other that it cannot be presumed that one would have been adopted without the other. Elsewhere the rule is laid down that if a statute attempts to accomplish a single object only, and some of its provisions are void, the whole must fail unless sufficient remains to effect the object without the aid of the invalid portions, but if its purpose is to accomplish two or more objects and it is void as to one, it may still, in

every respect, be complete and valid as to the other.[13] It must be evident from the nature of the subject that no certain rules can be laid down. Each statute must be considered upon a view of its various provisions and its relation to statutes in *pari materia*. The decided cases must be regarded with reference to the mode in which they arise and to the manner in which the statute is drawn in question. As illustrating this suggestion Kilgore v. Magee may be compared with subsequent cases relating to the same statute, and Scranton v. Whyte,[14] may be referred to. The courts may be astute to save as much as possible of a statute of considerable age and frequent use, under which many rights have come into existence, when a new statute would not be regarded with the same concern. In view of the foregoing, and because the subject is more general than the scope of the particular subject under consideration, no attempt will be made to treat this topic in detail.

[1]Ayars' Appeal, 122 Pa. St. 266.
[2]Frost v. Cherry, 122 Pa. St. 417.
[3]Ruan Street, 132 Pa. St. 257.
[4]Kilgore v. Magee, 85 Pa. St. 401.
[5]Safe Deposit & Trust Company v. Fricke, 152 Pa. St. 231.
[6]Pittsburg v. Hughes, 13 C. C. R. 535.
[7]Wyoming Street, 137 Pa. St. 494.
[8]Pittsburg's Petition, 138 Pa. St. 401.
[9]Simon's Case, 4 D. R. 189.
[10]Betz v. Philadelphia, 4 C. C. R. 481.
[11]Gaston v. Graham, 18 C. C. R. 265.
[12]Meadville v. Dickson, 129 Pa. St. 1.
[13]Commonwealth v. Reynolds, 8 C. C. R. 568.
[14]Scranton v. Whyte, 148 Pa. St. 419.

14. Validity of Things Executed Under Invalid Acts of Assembly.

In Dunn v. Mellon,[1] Mr. Justice Green said: "In the case of Pittsburg's Petition, 138 Pa. St. 401, we decided not only

that certain portions of the Acts of 1887 and 1889, relating to streets and sewers in cities of the second class, were unconstitutional and void, but also that the city must pay for all work done under the proceedings, and for all damages inflicted upon property-owners thereby. All the proceedings of the city for the opening of streets and assessment of damages and benefits, under the Acts of 1887 and 1889, had at least color of authority under the language of those Acts. If the real legal authority did not exist, because those Acts were unconstitutional, the city would be responsible for the damages sustained by their proceedings. But it does not at all follow that the officers or agents who executed the authority of the city in the premises would be subject to any such responsibility.

"The commissioner of highways was the proper officer, both *de facto* and *de jure*, for the execution of the orders of the city for the opening of streets, and could proceed with such execution without subjecting himself to a personal liability for his acts as such. He could not question the validity of his orders, and it was his duty to obey them. In the case of Clark v. Commonwealth, 29 Pa. St. 129, we held that even the acts of a president judge, whose right to his office was questioned, could not be impugned in any collateral proceeding. We said: 'He is a judge *de facto*, and as against all parties but the Commonwealth he is a judge *de jure* also.' In the case of Campbell v. Commonwealth, 96 Pa. St. 344, we enforced the same doctrine, saying, in relation to the challenged title of two associate judges: 'Under due form of law they hold their offices by title regular on its face. They are performing the duties thereby imposed on them, and enjoying the profits and emoluments thereof. Thus they are judges *de facto*, and as against all parties but the Commonwealth they are judges *de jure*. Having at least a colorable title to these offices, their right thereto cannot be questioned in any other form than by *quo warranto* at the suit of the Commonwealth.' In both of the foregoing cases we refused to permit the validity of the

acts done by the judges to be called in question in any collateral proceeding.

"It is no doubt true that unconstitutional laws cannot confer either contract rights or property rights upon any persons, natural or artificial, and the validity of such laws may be directly questioned by any persons adversely interested. But that doctrine is not in conflict with the question which arises in this case. Here, the question is as to the immunity from personal liability of a citizen who acts as the mere representative of a municipal officer, in the performance of a duty which, apparently and by color of law, rested upon him as a citizen, and which would necessarily be performed by the municipal officer without any personal liability, if the citizen refused to obey the law and the mandate of the officer. If, in such circumstances, the municipal officer would be exempt from individual liability for executing the orders of the city, we know of no reason why the citizen should be subject to such liability, he being a person interested, and apparently subject to the duty of obeying the mandatory order of the authorities. No hardship results to the persons injured, as they have their recourse to the city, and it would be a severe hardship to hold the citizen liable for merely obeying the law as it is written."

In this case the defendants removed a portion of a house in obedience to an order of the commissioners of highways in Pittsburg, given under color of statutes, afterwards declared invalid, under an ordinance for the opening of a certain street for which regular proceedings had been had under the said statutes. The landlord in compliance with the order removed the building, and thereby evicted plaintiffs, tenants, who were held not to be entitled to recover.

In King v. Philadelphia Company,[2] it appeared that a natural gas company had laid pipes in a street by permission of the city. The street had been laid out under the Act of June 14th, 1887, P. L. 386, the proceedings under which had been regular and uncontested; afterwards, a property-owner abutting upon and claiming fee in the street, sought to enjoin the

gas company from keeping and maintaining the pipes. In this case Mr. Justice GREEN said: "It is now objected against the legality of the action of the defendant in laying its pipes, that the city government had no power to proceed in the opening of this street, because the Act of 1887 was unconstitutional in certain respects. However this contention might suffice to prevent the city from laying out and opening streets in the future, it does not follow by any means that it will suffice to overthrow such work previously done under color of the authority conferred by the Act. If no question of the constitutional power of a city to do municipal work, such as the opening or grading and paving of streets, the construction of drains and sewers, the erection of municipal buildings, the introduction of gas and water-works, arises until years have elapsed after such work is done, it could not be tolerated that because the power is ultimately held to have been in excess of the lawful authority of the city, that such streets must be closed and abandoned, or the sewers and drains destroyed, or the gas and water-works closed, or the municipal buildings torn down. Such municipal works having been done under color of lawful authority, when no question as to the validity of the authority was raised, must be regarded as lawfully done. The opening of a street ordinarily is followed by the erection of buildings on both sides, by the laying of gas and water pipes, and the construction of sewers. If after all this has taken place it is discovered and judicially decided that the law under which the municipal authorities have acted in the premises is unconstitutional, surely it cannot be that all the improvements, works, and buildings, carried on and constructed under apparent legal authority must be abandoned or destroyed.

"There is a very well-established principle applicable to such cases, which holds valid the acts done by persons exercising official functions, by virtue of legislative authority, which is subsequently declared void. Thus, in Clark v. The Commonwealth, 29 Pa. St. 129, where a person had been convicted of

murder in the first degree, and had pleaded to the jurisdiction of the court that tried and sentenced him, that the presiding judge had not been lawfully elected under the provisions of the Constitution, we held that the title of the judge to his office could not be called in question by a private suitor, but only by the Commonwealth, that he was a judge *de facto*, and as against all parties but the Commonwealth a judge *de jure* also. It was said by Mr. Justice WOODWARD, in delivering the opinion, that 'the notion that the functions of a public officer, or of a corporation existing by authority of law, can be drawn in question (I do not mean as to the mode of their exercise, but as to their right of existence), except at the pleasure of the sovereign is a mistake that springs from the too prevalent misconception that it is the duty of everybody to attend to public affairs.'

"In Campbell v. The Commonwealth, 96 Pa. St. 344, in an indictment for arson, a question was raised in this court as to the title of the two associate judges to their office under the Constitution of 1874. The defendants were convicted and sentenced, and in this court they claimed that the oyer and terminer which sentenced them was not a legally constituted court, but we declined to entertain the question on the ground that the associates were judges *de facto*. Mr. Justice MERCUR said: 'Under due forms of law they hold their offices by title regular on its face. They are performing the duties thereby imposed on them and enjoying the profits and emoluments thereof. Thus they are judges *de facto*, and as against all parties but the Commonwealth are judges *de jure*. Having at least a colorable title to these offices their right thereto cannot be questioned in any other form than by a *quo warranto* at the suit of the Commonwealth.'

"In Keyser v. McKissan, 2 Rawle, 139, the action was brought by the commissioners of a county against the county treasurer and his sureties on the treasurer's bond, and it was alleged in defense that the plaintiffs had never taken the oath of office required by law, and were therefore disqualified to

act in their official capacity, or to maintain the action. ROGERS, J., conceding that the oaths were never taken, said: 'The rule which governs the case is that the commissioners who appointed the treasurer were officers *de facto*, since they came into their office by color of title. It is a well-settled principle of law that the acts of such persons are valid when they concern the public, or the rights of third persons who have an interest in the act done: The People v. Collins, 7 Johns. Rep. 554; King v. Lisle, Andrews' Rep. 163. And this rule has been adopted to prevent a failure of justice. . . . The reason given for the rule is most satisfactory. That the act of an officer *de facto* where it is for his own benefit is void, because he shall not take advantage of his want of title, which he must be cognizant of, but where it is for the benefit of strangers or the public who are presumed to be ignorant of such defect of title, it is good: Cro. Eliz. 699; King v. Lisle, Andrews' Rep. 163; Hippsly v. Tucke, 2 Lev. 184.'

"In Riddle v. The County of Bedford, 7 S. & R. 386, this court said, DUNCAN, J.: 'There are many acts done by an officer *de facto* which are valid. They are good as to strangers, and all those persons who are not bound to look further than that the person is in the actual exercise of the office, without investigating his title.'

"To the same effect are Kingsbury v. Ledyard, 2 W. & S. 41, and Gregg Township v. Jamison, 55 Pa. St. 468.

"Applying these principles to the present case it will be seen that the proceedings for the extension and opening of Negley Avenue were conducted in a regular and orderly manner by the select and common councils of the city of Pittsburg, who were officials in the actual exercise of their functions. One of the instrumentalities employed was the board of viewers, who were also the properly constituted officers for that purpose, according to the law supposed to be applicable to the case. These several officials acting in their official capacity carried through to completion all the proceedings necessary to the extension and opening of the avenue for public use. The

councils in their official capacity gave consent to the occupancy of the avenue by the defendant for the purpose of laying their pipes. The chief of the department of public works, the proper officer for that purpose, not only gave consent, but gave directions to the defendant, to occupy Negley Avenue in laying its pipes. All of these officials held their offices and exercised their functions so far as the proceedings in regard to the extension and opening of Negley Avenue were concerned, in strict conformity with the law as it was written. With those proceedings the defendant had nothing to do, but, acting in perfectly good faith, so far as appears upon this record, did the acts complained of in the plaintiffs' bill in the matter of laying their pipes. In our opinion it is not practicable to hold that their acts in the premises were entirely illegal and void. They were not responsible for the law as it stood, nor were they responsible for errors or defects, if there were any, in the exercise of the official functions of the several city officials. They had a right to assume that the officials whose action was involved were legally constituted officials, with full power to do just what they did do with regard to the subject of the present contention.

"Nor, even if there were some defects in the manner in which the pipes were laid, would those defects suffice to invalidate the entire action of the defendant in laying their pipes. The defendant can easily be compelled to relay any portion of its pipes which are defectively laid. We do not consider that any question of estoppel arises against the plaintiff by reason of the payment by him of the assessed benefits. We decide the case upon the ground that there was a compliance with the existing law in the laying of the pipes, and that the defendant is not responsible for the law of 1887, or for its want of conformity to the Constitution. Acting within the limits of that law and by the sanction of the properly constituted officials, who were officers *de facto* in the exercise of their official functions, they are protected from an allegation of illegality in their action."

[1]Dunn v. Mellon, 147 Pa. St. 11.

[2]King v. Philadelphia Company, 154 Pa. St. 160.

A borough which became a *de facto* city under the invalid classification Acts did not revert to its former condition as a borough when these were declared invalid. It became a city of the third class: Hoffman v. Matthes, 3 Delaware County, 579.

15. Curative Statutes.

In Reading v. Savage,[1] in which it was decided that Section 57 of the Act of May 23d, 1874, P. L. 269, making acceptance of its provisions optional was void, and that the provisions of the said Act, so far as they depended upon such acceptance were also void, and which ruling was afterwards reversed,[2] it was held that the invalidity of liens depending upon the provisions so held to be void was not helped by the provisions of Section 2, Article XXII, of the Act of May 24th, 1887, P. L. 261, which enacted that "all taxes or assessments made in any of the cities of the fourth, fifth, sixth, or seventh classes within five years next preceding the date of the approval of this Act are hereby made valid, and the said cities are hereby authorized and empowered to collect the same in the manner provided by this Act, for the collection of taxes and assessments." Under the classification attempted by the Act of 1887 Reading was a city of the fifth class. This Act at the date of the decision had not been declared invalid as was afterwards done in Ayars' Appeal.[3] In passing upon Section 2 of the Act of 1887, the court below, Ermentrout, J., said: "But it is contended that the lien, assessment, and *scire facias* are made valid by Section 2, Article XXIII, Act of May 24th, 1887, P L. 261, dividing cities into seven classes. This section reads: 'All taxes levied or assessments made in any of said cities of the fourth, fifth, sixth, or seventh classes within five years next preceding the date of the approval of this Act are hereby made valid, and said cities are hereby authorized and empowered to collect

the same in the manner provided by this Act for the collection of taxes and assessments.' Whilst true it is that as early as Hepburn v. Curts, 7 W. 300, and Schenley v. Allegheny, 36 Pa. St. 57, it has been held 'the Legislature may pass retrospective laws such as in their operation may affect suits pending and give a party a remedy he did not possess, modify an existing remedy, or remove an impediment in the way of legal proceedings,' the important qualification was, nevertheless, attached that such laws must not violate any constitutional prohibition. The General Assembly cannot by an enabling Act indirectly make that constitutional which directly is prohibited as unconstitutional. Such legislation is just as obnoxious as the original Act. This very point has also been decided in other States. In Iowa it was held that the Legislature cannot validate void special legislation: Strange v. Dubuque, 62 Iowa, 303; and in Wisconsin it was held that a Legislature cannot give validity, by ratification or curative law, to past defective proceedings by officers or municipalities. If it has not the power to authorize such proceedings directly its power to ratify is subject to whatever limits describe its power to grant authority, and, therefore, after a constitutional amendment has forbidden it to pass a special law for the collection of taxes, it cannot cure defective proceedings under a previous special law: Kimball v. Rosendale, 42 Wis. 407. To the same effect is Cain v. Goda, 84 Ind. 209." The judgment was affirmed upon this opinion.

The Act of May 23d, 1889, P. L. 272, entitled "An Act authorizing assessments and reassessments for the cost of local improvements already made, or in process of completion, and providing for and regulating the collection of the same," recited that local improvements of different kinds had heretofore been made in the cities of the State and the cost thereof assessed upon the abutting property, or upon property benefited; that it was doubtful whether the assessments made and levied to pay for said local improvements could be collected under existing laws, and that said cities were threatened

with great loss, unless said assessments could be collected. It made provision for assessment or reassessment by ordinance for the cost of local improvements made or in process of construction, or which had already been completed, upon property benefited. Provision was made for credit upon such assessments for any amounts previously paid on any former assessment on account of any property. The Act contained a proviso that it should not apply to cities of the first and second classes, and was intended as a curative Act to validate proceedings undertaken pursuant to the provisions of the Act of May 24th, 1887, which had been held invalid in Ayars' Appeal,[4] decided in January, 1889. In Chester City v. Black,[5] the validity of this Act of 1889 was sustained by the court in a *per curiam* opinion, in which it was said: "The paving in question was done under authority of the Act of May 24th, 1887, P. L. 204, entitled 'An Act dividing cities of this State into seven classes,' etc. This Act was declared unconstitutional in Ayars' Appeal, 122 Pa. St. 266. The Act of May 23d, 1889, P L. 272, authorizing assessments and reassessments for the cost of local improvements already made or in process of completion, and providing for and regulating the collection of the same, was passed to meet this difficulty. Subsequent to its passage, viewers were appointed by the councils of the city of Chester, in accordance with the terms of said Act, who proceeded to reassess the cost of these improvements upon the property fronting upon the said street, by what is commonly known as the foot-front rule. We need not discuss the rule itself, as there is nothing in the case-stated to indicate that it was not applicable to this street and to the property assessed. The only question remaining is the power of the Legislature to authorize this reassessment. Upon this point we are not in any doubt. Judge DILLON, in referring to it in Section 814 of the third edition of his excellent work on municipal corporations, says: 'The original assessment for a local improvement proving insufficient, the Legislature may constitutionally authorize a reassessment, and make it

operate upon the property benefited;' and cites a number of cases which sustain his text, among which are the following: Mills v. Charleton, 29 Wis. 400; Butler v. Toledo, 5 Ohio, 225; Dean v. Borchsenius, 30 Wis. 236; State v. Newark, 34 N. J. L. 236; People v. Brooklyn, 71 N. Y. 495.

"It cannot be denied successfully that the Legislature had the power to authorize this assessment originally, and that nothing but the unconstitutionality of the Act of 1887 rendered the proceeding abortive. The principle has been repeatedly recognized in this State that where the Legislature has antecedent power to authorize a tax it can cure by a retroactive law an irregularity or want of authority in levying it, though thereby a right of action which had been vested in an individual should be divested: Grim v. School District, 57 Pa. St. 433. In the same line are Commonwealth v. Marshall, 69 Pa. St. 328; Schenley v. Commonwealth, 36 Pa. St. 57; Magee v. Commonwealth, 46 Pa. St. 358; Kelly v. Pittsburg, 85 Pa. St. 170; Hewitt's Appeal, 88 Pa. St. 55; Erie City v. Reed, 113 Pa. St. 468. The constitutionality of this kind of legislation is not open to objection. Of the numerous cases upon this subject it is sufficient to refer to Huidekoper v. City of Meadville, 83 Pa. St. 156, where it was held that the Act of 1870, which confers upon the city of Meadville the power of paving its streets and collecting the cost from the owners of adjoining property by filing liens for paving, is not in violation of Section 1, Article IX, of the Constitution, providing for a uniformity of taxation."

In Meadville v. Dickson,[6] the second section of the Act of May 17th, 1887, P. L. 117, entitled "An Act authorizing cities of the third, fourth, and fifth classes to levy and collect taxes and validate taxes levied and assessments made therein," was held ineffective as a curative Act, because its provisions were based upon an invalid classification of cities.

In Donley v. Pittsburg,[7] the validity of the Act of May 16th, 1891, P. L. 71, entitled "An Act authorizing the ascertainment, levy, assessment, and collection of the costs, dam-

ages, and expenses of municipal improvements, including the grading, paving, macadamizing or otherwise improving of any street, lane, or alley or parts thereof completed or now in process of completion, and also the costs, damages, and expenses of the construction of any sewer completed or now in process of completion, and authorizing the completion of any such improvement," was sustained. This Act, as its title indicates, was a general statute and in terms related to any city, borough, township, or other municipal division of the State. It was passed to provide for improvements made or in process of completion under the Acts of June 14th, 1887, P. L. 386, and May 16th, 1889, P. L. 228. In this case the court in a *per curiam* opinion said: "It was urged that this Act does not apply because the improvements in question were made under void Acts of Assembly, and without any authority whatever. If they had been made under competent authority, or a valid Act of Assembly, there would have been no need of this curative legislation. The work having been done under void authority, and the property-owners having received the benefits of the street improvements, the Legislature had the clear right to legalize what it might previously have ordered. That the Legislature had the power to pass such remedial legislation is settled by abundant authority: Satterlee v. Matthewson, 16 S. & R. 169; Schenley v. The City of Allegheny, 36 Pa. St. 29; Commonwealth v. Marshall, 69 Pa. St. 328; Hewitt's Appeal, 88 Pa. St. 55; Harrisburg v. McCormick, 129 Pa. St. 213; Chester City v. Black, 132 Pa. St. 568."[8]

York was a city of the fifth class under the Act of May 24th, 1887, Article XIX, Section 1, P L. 204. March 30th, 1888, an ordinance was passed fixing the compensation of the city assessor at $3 per day; January 7th, 1889, the Act was declared invalid in Ayars' Appeal. The Act of May 8th, 1889, P. L. 133, reclassified the cities of the State, and York fell into the third class. The Act of May 13th, 1889, P. L. 196, declared the *de facto* of councils of cities

to be and to have been legally constituted, and validated and declared to be in full force all ordinances duly passed by them. May 23d, 1889, the general Act for the government of cities of the third class was passed, P. L. 277, and Article XV, Section 1, provided for the election of city assessors. Article XIX, Section 2, provided that "All ordinances of any of said cities heretofore legally passed, not inconsistent with such provisions as are hereby made valid shall be and remain in full force and virtue until altered or repealed." The plaintiff was elected city assessor in February, 1890, and in October of that year an ordinance was passed fixing the salary of city assessors at $2.50 per day, not to exceed $225 in any year. The plaintiff claimed for 201 days at $3 per day, but defendant refused to pay more than $225. The plaintiff claimed that the ordinance of March 30th, 1888, governed, as it was not repealed at the time of his election. The court below held otherwise, but the judgment was reversed.[9]

Said Mr. Justice MITCHELL in the opinion: "When the ordinance of March 30th, 1888, was passed it had apparently all the requisites of validity, passage in due form, by the regularly elected councils of a city of the fifth class under the Act of May 24th, 1887, P. L. 204. All of these elements existed *de facto*, and were supposed to exist *de jure*. Under this supposition the city organization had been made, officers elected, their compensation fixed, and the general business of a city put in operation. When the Act of 1887 was declared to be unconstitutional, in Ayars' Appeal, 122 Pa. St. 266, the result was intolerable confusion. Public measures had been undertaken, and rights which had been acquired in the utmost good faith were set aside and ended on the instant. This condition of affairs existed all over the State, and called imperatively for relief. The Legislature met the crisis promptly and effectually by the Act of May 13th, 1889, P. L. 196, by which the existing councils were declared to be and to have been legally constituted councils, and their ordinances were validated and declared to be in full force. The intent of this Act is per-

fectly clear. It was to make all the *de facto* municipal bodies *de jure*, and to render all their acts, done in their *de facto* capacity, valid and effective in law. It was a universal statute, making no exceptions, as there was no room for any. No foresight, legislative or other, could have discriminated among the vast mass of ordinances in all the cities similarly situated, which would be required to bring order out of this chaos. The Legislature did not attempt it. It validated them all.

"We have then an ordinance applicable to an existing office, both supposed to be legal and operative. Both fail together by the failure of the foundation on which they rested alike. The Legislature at once restores the ordinance and says it shall be 'valid and in full force,' and immediately after restores the office and makes it also *de jure*. When the office was thus reinstated it found an ordinance applicable to it already existing. The order of dates of the two statutes is entirely immaterial. They are parts of the same legislative effort, to repair the mischief which the invalidity of the previous Act had brought about, and to ratify everything that had been done under it, as broadly and as conclusively as if it had been legally authorized in the first instance.

"Even if there was a doubt on this point, the same result would be reached by the force of Article XIX, Section 2, of the Act of May 23d, 1889. The same statute which restores the office also makes valid all the ordinances theretofore legally passed and declares that they shall be in full force until repealed or altered. The office and the ordinance were parts of the old system, and it was intended to restore them together as alike parts of the new."

[1]Reading v. Savage, 120 Pa. St. 198.
[2]Reading v. Savage, 124 Pa. St. 328.
[3]Ayars' Appeal, 122 Pa. St. 266.
[4]Ayars' Appeal, 122 Pa. St. 266.
[5]Chester City v. Black, 132 Pa. St. 568.
[6]Meadville v. Dickson, 129 Pa. St. 1.

[7]Donley v. Pittsburg, 147 Pa. St. 348.

[8]And see Whitney v. Pittsburg, 147 Pa. St. 351; Bingaman v. Pittsburg, 147 Pa. St. 353; Gray v. Pittsburg, 147 Pa. St. 354; Rubright v. Pittsburg, 147 Pa. St. 355.

[9]Devers v. York, 150 Pa. St. 208; and see Devers v. York, 156 Pa. St. 359; Melick v. Williamsport, 162 Pa. St. 408.

16. Questions of Repeal.

As shown below, the application of class legislation has given rise to interesting questions as to the effect of it in repealing prior local legislation, and as to how far it may be modified by subsequent general laws.

The Act of March 31st, 1876, P. L. 13, fixing the salaries of county officers in counties having over 150,000 inhabitants, pursuant to the constitutional provision, is neither a local nor a special law, as it applies to all counties of a special class created by the Constitution itself, but it comes within the reason of the rule that a prior statute which is particular is not repealed by a general statute without negative words, though the provisions of the latter differ from those of the former. Hence, in the county of Luzerne, in which the Act of 1876 is in effect, the provisions of that Act will prevail over the subsequent general law of May 12th, 1887, P. L. 95, which provides that the auditors of each county shall be allowed the sum of $3 each for each and every day necessarily employed.[1]

The Act of March 22d, 1877, P. L. 16, entitled "An Act in relation to cities of the second class, providing for the levy, collection, and disbursement of taxes and water rents," was enacted when the city of Pittsburg was the sole city of that class. It was held that this Act did not repeal the previous Act of February 14th, 1871, P. L. 126, entitled "An Act providing for the registration of lots in the city of Pittsburg," nor the Act of May 5th, 1876, P. L. 124, providing for the classification of real estate for purposes of taxation, and for the payment of assessors in cities of the second class. It was held that the fourth section of the Act of 1871, which provided

that no property returned and registered in accordance with the provisions of the Act should be subject to sales for taxes or other municipal claims, except in the name of the owners as returned, might be construed in *pari materia* with the twelfth section of the Act of 1877. That the former Act applied to real estate returned and registered, while the latter might with entire propriety be restricted to real estate which had not been returned and registered according to the provisions of the Act of 1871.[3] In this case it was said by Mr. Justice STERRETT: "Assuming, for argument sake, that this and other provisions of the Act of 1877 are within the proper limits of legislation for cities of either class, it follows that said Act is a general law, as much so as any general statute applicable to the whole State. If it is not a general law it must be special or local, and therefore unconstitutional, in so far, at least, as it embraces matters in which local legislation is prohibited. Viewing it then as a general law what is its effect, or rather the effect of the section referred to, including its cognate provisions, on the registry Act of 1871—a purely special, local Act, relating to a particular subject? As was recently said by our Brother HEYDRICK, in Bell v. Allegheny County, 1 Adv. Rep. 763, and 30 W. N. C. 193 [149 Pa. St. 381]: 'It is a rule of interpretation, as old as the common law, and followed in an unbroken line of decisions in this State, that a general affirmative statute will not repeal a previous particular statute upon the same subject, though the provisions of the former be different from those of the latter.' To the same effect are Seifried v. Commonwealth, 101 Pa. St. 200; Malloy v. Reinard, 115 Pa. St. 25, and many other cases that might be cited. It will not do to assume that the Legislature—well knowing Pittsburg was the only city of the second class when the Act of 1877 was passed—intended to interfere with special local Acts of that city, and especially to repeal all provisions of the registry Act that are in conflict with said Act of 1877. As was said in Bell v. Allegheny County (*supra*), this proves too

much. Whenever the intent is to legislate for a particular city the resultant legislation contravenes Section 7, Article III, of the Constitution." Pointing out that the Acts of 1871 and 1877 might be construed in *pari materia*, the learned justice continued: "As thus construed there is no necessary repugnancy between the fourth section of the latter Act and the twelfth section of the Act of 1877. The leaning of courts is strongly against repealing the positive provisions of a former statute by construction. The more natural, if not necessary, inference, in all such cases, is that the Legislature intended the new law to be auxiliary to and in aid of the purposes of the old law. There should, therefore, be such a manifest and total repugnancy in the provisions of the new law as to lead to the conclusion that the latter abrogated and were designed to abrogate the former: Henrix's Account, 146 Pa. St. 285. When two statutes are so flatly repugnant that both cannot be executed, and we are obliged to choose between them, the latter is deemed a repeal of the former; but, whenever they can be made to stand together effect, as far as possible, should be given to both: Brown v. Commissioners, 21 Pa. St. 42." As shown elsewhere the twelfth section of the Act of 1877 was held to be invalid because it was in effect a local law authorizing the creation of liens and prescribing the effect of judicial sales of real estate in the case cited, and in the subsequent case of McKay v. Trainor,[4] the same declaration was made. In Commonwealth v. Macferron,[5] it was decided that while a previous local statute is not repealed by a subsequent general statute inconsistent with it unless words of repeal are employed, yet such rule is not applicable to classification Acts: (1) Because the legislative intent to repeal local laws is fully expressed in those Acts. (2) Because those Acts are of a character to exclude the operation of the rule, being intended to revise the laws relating to municipal affairs so as to reduce all former types and forms of municipal government to three, one for each class. (3) Because the very nature of class legislation renders the rule inapplicable. Whenever

any law regulating the municipal affairs of cities of the given class shall be found to conflict with a previous local statute applicable to any member of the class relating to the same subject, the latter must give way by reason of the nature and purpose of class legislation. Hence the provisions of the Act of March 22d, 1877, prescribing a system of taxation for cities of the second class is not a local law in violation of Article IX, Section 1, of the Constitution, declaring that all taxes shall be levied under general laws—the power to levy and collect taxes being one of the corporate powers which the classification Acts have undertaken to regulate.

Whether all the provisions of the Act of March 22d, 1877, relating to liens, law of evidence or the effect of sheriff's sales, are constitutional, was not decided, but only that the city of Allegheny, having passed out of the third into the second class of cities, must levy and collect its taxes under the system provided for that class.

The result of these cases is, that a special law governing a city of a given class is not repealed by a general law passed for the class of cities to which that city belongs, at a time when such special law was in force therein; but that the same general law will replace a special law on the same subject which was in force up to the time when the city subject to it passed into the class in which the general law was operative.

Referring to the Act of April 20th, 1874, P. L. 65, entitled "An Act to regulate the manner of increasing the indebtedness of municipalities, to provide for the redemption of the same, and to impose penalties for the illegal increase thereof," Mr. Justice WILLIAMS said, in Chalfant v. Edwards:[6] "The Act of 1874 passed immediately after the adoption of the Constitution, and for the purpose of carrying this and other provisions of that instrument into operation, introduces a new and uniform system. It follows the constitutional provision in the limitation it imposes on the power of all the bodies to which it relates to borrow money, and prescribes the manner in which they shall proceed to contract or to increase their

indebtedness within the limits fixed. This Act supersedes the methods and the limits theretofore existing in different portions of the State, and substitutes its own provisions for them. This was the legislative intent, and this we think was the legal effect of the constitutional provision and the legislation under it.

"We do not disturb the general rule. Ordinarily it is true that a general law will not operate to repeal a previous local Act without some words indicative of such an intention. But when it is the duty of the Legislature to change an existing system because of some constitutional provision on the subject and a law is passed for this purpose introducing a new system which is general in its terms and evidently intended to provide a uniform system for all subjects to which it relates, no repealing words are necessary. This doctrine has been recognized in many cases. Among them we may mention Best v. Baumgardner, 122 Pa. St. 17; Quinn's Appeal, 162 Pa. St. 56; Howard's Appeal, 162 Pa. St. 374; and Bruce v. Pittsburg, 166 Pa. St. 152. Hutchinson's Appeal, 4 Pennypacker, 84, relied on by the appellant, has not been followed, and to avoid all doubt about the subject it is now distinctly overruled, so far as it relates to this question." Giving effect to this declaration, it was held in that case that the Act of 1874 in effect repealed the sixty-ninth section of the Act of February 12th, 1869, P. L. 150, entitled "An Act consolidating the wards of the city of Pittsburg for educational purposes," which limited the indebtedness of the said school districts of Pittsburg to an amount less than that permitted by the Act of 1874.

In Bruce v. Pittsburg,[6] it was held that the Act of April 20th, 1874, P. L. 65, regulating the increase of indebtedness of municipalities repealed the Act of April 6th, 1850, P. L. 408, limiting the debt of the city of Pittsburg to $1,500,000.

The power of a borough of its own motion to open or widen a street under the Act of April 3d, 1851, P. L. 320, is not impaired by the Act of May 16th, 1891, P. L. 75, providing for

the passage of ordinances for such purposes on the petition of a majority of the property-owners. There is nothing repugnant in the existence of two methods of initiating improvements. A borough council may exercise its own judgment as to a street in a built-up portion of a borough while as to a remoter highway it may wait to be moved by the petition of the property-owner.[1]

In this case Mr. Justice MITCHELL said: "The main ground on which the proceedings were set aside by the learned judge below has since been taken away by the decision of this court in Hand v. Fellows, 30 W. N. C. 72, and McCall v. Coates, 23 Atl. Rep. 1126, 1127. It was there held that the Act of May 16th, 1891, P. L. 75, in relation to laying out, opening, etc., streets, etc., in the several municipalities of the Commonwealth, is an affirmative Act, conferring additional and cumulative powers, on municipalities of all grades, but repealing no prior statute expressly, nor any portion thereof by implication 'unless the system provided by it is so inconsistent with that previously existing as to make it impracticable for them to stand together.' In the task of steering through constitutional restrictions, well meant, but destructive of necessary governmental powers, the Legislature had found it difficult to construct statutes conferring powers and modes of procedure suitable to all the diverse needs, situations, and wishes of the multitude of municipal organizations in the State. In the effort some well intended Acts had come to naught, and others had been shorn of sections that left inconvenient gaps here and there in the whole system. It was to fill these gaps, to supply the *casus omissi*, and to supplement powers doubtful or defective, that the Act of 1891 was passed. It took away no power in any municipality that existed before, nor interfered with any mode of its existence, except as already said, where there is an irreconcilable repugnancy."

[1]Rymer v. Luzerne County, 142 Pa. St. 108; and see Bell v. Allegheny County, 149 Pa. St. 381.

[2]Safe Deposit & Trust Company v. Fricke, 152 Pa. St. 231.

[3]McKay v. Trainor, 152 Pa. St. 242.

[4]Commonwealth v. Macferron, 152 Pa. St. 242.

[5]Chalfant v. Edwards, 173 Pa. St. 246.

[6]Bruce v. Pittsburg, 166 Pa. St. 152.

[7]Hanover Borough's Appeal, 150 Pa. St. 202; and see generally Ruan Street, 132 Pa. St. 257; Commonwealth v. Grier, 152 Pa. St. 176; McCleary v. Allegheny County, 163 Pa. St. 578; Von Bonnhorst v. Allegheny County, 163 Pa. St. 588; McGunnegle v. Allegheny County, 163 Pa. St. 589; Commonwealth v. Grier, 179 Pa. St. 640; Quinn v. Cumberland County, 162 Pa. St. 55; Commonwealth v. Weir, 165 Pa. St. 284; Commonwealth v. Schneipp, 166 Pa. St. 401.

The division of a county governed by a special law does not operate to repeal the law in whole or in part. It remains in effect in all of the territory for which it was originally enacted: Lackawanna County v. Stevens, 105 Pa. St. 465, followed in Gibbons v. Scranton School District, 3 Lack. Jur. 241.

In Bear v. Eshleman, 14 Lanc. Law Review, 273, it was held that the general Act of June 8th, 1893, P. L. 333, authorizing the election of tax collectors in boroughs and townships for a term of three years repeals local laws on the same subject, upon the principle that since the adoption of the present Constitution the policy of the law is uniformity in the administration of the affairs of counties and townships, as well as cities and boroughs, and therefore such an interpretation of statutes should be made as would promote that end. See Leitzel v. Center County, 14 Lanc. L. R. 191; Price v. Blair County, 14 Lanc. L. R. 134.

The Act of April 26th, 1855, P. L. 321, which was local to the county of Allegheny, provided certain remedies in cases of conviction under the general law of February 26th, 1855, P. L. 73, relating to the sale of liquors. The Act of April 3d, 1872, P L. 843, to regulate the sale of intoxicating liquors in the county of Allegheny repealed all laws and parts of laws in force relative to the sale of liquors in said county, or any part thereof, and made full and general regulations governing the sale of liquor in said county. This Act was

in turn repealed by the general license law of May 13th, 1887, P. L. 108. In a case arising in the county of Allegheny it was claimed that under the rule that the repeal of a repealing Act (in this case the Act of 1872) revived the provisions of the Act repealed, the Act of April 26th, 1855, was revived and in force in the county of Allegheny. It was held that this rule was inapplicable where the Act was special because the operation of the rule in such a case would be in contravention of Article III, Section 7, as an indirect enactment of a special law: Durr v. Commonwealth, 3 C. C. R. 525.

The Act of April 9th, 1870, P. L. 1116, applied to Wilkins Township; Sterrett Township was erected out of Wilkins in 1879. Held that the Act continued in force in both unaffected by the division: Irwin v. McCallin, 28 P. L. J. 322.

The Liquor License Law of April 3d, 1872, P L. 843, entitled "An Act to regulate the sale of intoxicating liquors in the county of Allegheny," was repealed by the Act of May 13th, 1887, P. L. 108, commonly known as the "Brooks License Law," which provided, Section 19, that "all local law fixing a license rate or fee less than is provided for in this Act be and the same are hereby repealed:" Commonwealth v. McCandless, 4 C. C. R. 119, affirmed 10 Central Reporter, 758; s. c., 21 W. N. C. 162.

CHAPTER III.

SUMMARY OF APPLICATIONS OF THE FOREGOING PRINCIPLES.

1. Local affairs of political subdivisions of the State.
   Preliminary.
   1. Counties.
   2. Cities.
   3. Boroughs.
   4. Townships.
   5. School districts.
2. Highways.
3. Judicial matters.
4. Liens.
5. Taxation.
6. Elections.
7. Private corporations.
8. Cemeteries, etc.
9. Labor, trade, mining, or manufacturing.
10. Special privileges and immunities.
11. Partial repeal of a general law.
12. Cases within general law or judicial jurisdiction.
13. Notice.

1. Local Affairs of Political Subdivisions of the State.

Preliminary.

No reported cases have been found in which a statute has been challenged as violative of any one of the following prohibitions of local and special legislation: changing names of persons or places; changing the venue in civil or criminal cases; authorizing the adoption or legitimation of children; locating or changing county seats; erecting new counties, or

changing county lines; granting divorces; erecting new townships or boroughs; changing township lines, borough limits, or school districts; changing the law of descent or succession; fixing the rate of interest; affecting the estates of minors or persons under disability; remitting fines, penalties, or forfeitures, or refunding moneys legally paid into the treasury. The cases related to the present subject classified according to the various provisions which have been invoked or enforced, are arranged, together with such provisions, as relating to:

1, Local affairs of political subdivisions of the State; 2, highways; 3, judicial matters; 4, liens; 5, taxation; 6, elections; 7, private corporations; 8, cemeteries, etc.; 9, labor, trade, mining or manufacturing; 10, special privileges and immunities; 11, partial repeal of general laws; 12, cases within general laws or judicial jurisdiction; 13, notice.

In the following paragraphs, wherein the cases are grouped and points decided briefly stated, there is some repetition; this is intentional and follows from the nature of the subject-matter. The constitutional provisions having been construed as remedial, there has been no disposition apparent in the decisions applying them, unless there be one exception, to impair their force by distinguishing between the end or purpose of a law and the incidental means or machinery necessary to render it effective. Thus, for example, a law may have for its end or purpose the regulation of the paving of the streets or the construction of sewers in municipalities of a certain class; such a law is not local or special, for it is within the principle of classification and relates to municipal functions, but it may nevertheless fail because the incidental means of making it operative are objectionable. It may contain invalid provisions as to the manner of assessing benefits, or as to the creation of liens, or as to the procedure to reduce them to judgment, or as to the effect of judicial sales upon the execution of such judgments. Thus, incidentally, the same law may infringe at once upon the constitutional provisions relating to taxation, to liens, to the jur-

isdiction of courts, and to the effect of judicial sales, while its purpose has no direct reference to either of these matters, and hence, where the objections upon constitutional grounds are numerous, as has frequently happened, the same case appears under different heads. The repetition, not carried to the extent it might be, serves to emphasize a point upon which too much stress cannot be laid. Of the statutes declared invalid comparatively few have failed because their main purpose or end was constitutionally objectionable. The large majority have failed in whole or in part because they have incidentally violated one or more of the constitutional provisions. And it may be remarked in this connection that the constitutional provisions, general and specific, affirmative and negative, sometimes themselves involving repetition, are so marshalled and so reinforce each other, that almost any offending statute must necessarily encounter more than one of them.

1. Local Affairs of Political Subdivisions of the State.

Provisions as to local affairs of political subdivisions of the State which have been construed.

Article III, Section 7, Clause 2. Regulating the affairs of counties, cities, townships, wards, boroughs, and school districts.

Article III, Section 7, Clause 11. Incorporating cities, towns, or villages, or changing their charters.

Article III, Section 7, Clause 19. Regulating the management of public schools, the building or repairing of schoolhouses and the raising of money for such purposes.

Article III, Section 21, Clause 2. No Act shall prescribe any limitation of time within which suits shall be brought against corporations for injuries to persons or property or for other causes different from those fixed by general laws regulating actions against natural persons and such Acts now existing are avoided.

Article XIV, Section 5. In counties containing over 150,000 inhabitants all county officers shall be paid by salary.

Article XV, Section 1. Cities may be chartered whenever a majority of the electors of any town or borough having a population of at least 10,000 shall vote at any general election in favor of the same.

1. Local Affairs of Political Subdivisions of the State.

1. Counties.

Under the definition of what may be a prohibited regulation of affairs of counties the following instances may be given: Providing for the holding of courts.[1] Fixing salaries of county officers.[2] Authorizing appeals by owners of real estate from tax assessments in counties of less than 500,000 population.[3] Regulation of fences.[4] An Act which provides a system for taxing the fees of officers in counties having less than 150,000 inhabitants is valid.[5]

In the case of Jenks Township v. Sheffield Township,[6] it appeared that the poor district of Jenks Township recovered a charge against the poor district of Sheffield Township for relief furnished to persons legally settled in Sheffield. The District of Sheffield defended on the ground that the Act of June 4th, 1879, P. L. 78, created a single poor district of Forest County and abolished the poor district of Jenks Township in that county, and that Warren County having erected a county poor-house and removed all its poor thereto prior to the passage of the Act of 1879, the said Act created a single poor district of Warren County and abolished the poor district of Sheffield Township situated therein. With reference to the defense of Sheffield so raised, Mr. Justice Clark said:

"The Act of June 4th, 1879, was intended to establish a general system for the relief and employment of the destitute poor throughout the State. The general plan or purpose of the Act is that each county shall be or become a single poor district; that real estate shall be purchased, and suitable buildings erected thereon, and that as soon as the buildings are completed and the county commissioners are prepared to ac-

commodate the poor of the district, upon notice given, the poor shall be transferred to their custody and care, and thereupon the duties of the overseers of the poor shall be performed by the county commissioners. But the practical provisions of this Act, it will be observed, do not come into effect, so as to abrogate the office or to dispense with the authorities of the overseers, until the county commissioners, under the conditons of the Act, have provided a place and are prepared to accommodate the poor thus transferred.

"It does not appear that the county commissioners of the county of Forest have as yet taken any steps toward the erection of a poor-house, or that they have made any other suitable provision or preparation for the relief or employment of the poor of the county; and it follows that the overseers throughout the county are still charged with the performance of all the duties appertaining to that office, since the passage of the Act of 1879, as before. The eighteenth section of that Act provides that 'after delivery of the poor to the commissioners as before provided, the overseers of the poor in the townships and boroughs embraced in said districts shall cease to act as overseers of the poor, except so far as may be necessary to levy and collect tax, settle the accounts, and pay debts already incurred.'

"But it is said that, if it be held that the provisions of the Act of 1879 are only to come into practical operation in the respective counties upon a vote of the people therein to that effect, it may produce local results merely; and that such a construction would condemn the Act, or a part of it at least, as a local or special law and therefore unconstitutional. If upon any ground the Act is wholly unconstitutional, it is plain that it cannot have the effect the appellant claims for it; if constitutional, it saves the office of overseer until its provisions are brought into full effect; if unconstitutionl, it is void, and can have no effect to abrogate that office. The contention of counsel is, however, that it may be held to be constitutional in part, and in part unconstitutional. But, from the

very nature of the several provisions of the Act of 1879, it is obvious that they were intended to operate as a whole; and, especially in view of the limitations imposed by the Constitution upon the creation of municipal indebtedness, it would seem to be impossible to sustain the first and some of the succeeding sections as constitutional, and set aside the third and fourth as unconstitutional. The effect of this, in some of the counties, might and probably would be to abrogate the present system for the support of the poor, and to render it wholly impracticable to provide any other. Moreover, it would appear that the limitations upon the powers of the Legislature as to local or special legislation do not extend to the regulation of the affairs of poor districts. The affairs of townships do not of necessity include the affairs of either the school or poor districts embraced within the same boundaries. The provision of the Constitution, Article III, Section 7, is that 'the General Assembly shall not pass any local or special law,' etc., 'regulating the affairs of counties, cities, townships, wards, boroughs, or school districts.' It is a very significant fact that whilst school districts are expressly included within the restriction, poor districts are plainly omitted. The overseers of Jenks Township, under the sixteenth section of the Act of March 9th, 1771, constitute a *quasi* corporation, by that name, distinct from the township of Jenks, with the right to sue and be sued; process in this form being properly served upon the overseers, whilst process against the school district is served upon the school directors, and that against the township upon the supervisors. The convention, being conversant with the manifold forms in which the public charity was dispensed, in county poor-houses and in district poor-houses organized under both general and special laws, in hospitals and homes supported by contributions both public and private, and through the ordinary agency of the overseers or directors of the poor, may have deemed it unwise to interrupt the course of legislation on this subject, or to restrict the relief and em-

ployment of the poor to any one uniform or general system for the whole State, preferring rather that the hand of charity might be freely extended in any form which the Legislature from time to time might provide. However this may be, the overseers of the poor in Jenks Township would appear to be the proper parties complainant in this case."

In Straub v. Pittsburg[7] it was held that the relief and care of the poor was a municipal purpose and that a statute authorizing cities of the second class to purchase and sell real estate for that purpose was valid. The judgment below was affirmed in a *per curiam* opinion. His Honor, Judge EWING, in the court below said: "Counsel for defendants have argued very forcibly and ingeniously that special and local legislation in regard to poor districts is not forbidden in the Constitution, and in this they are supported by a suggestion or *dictum* in the opinion of the Supreme Court in the recent case of Jenks Township v. Sheffield Township, 135 Pa. St. 400.

"With great respect for the learned judge making the suggestion (who was a distinguished member of the constitutional convention), we cannot agree with this view, until it shall be so decided by him or by the Supreme Court. It is true that the seventh section of the third article of the Constitution does not in the precise words prohibit local legislation for poor districts, as it does for school districts, and for this very good reason: the care of the poor had always been considered a municipal function and 'affairs of counties, cities, townships, wards, and boroughs,' for which local laws are prohibited in the second paragraph of Section 7, while the uniform rule had been to treat schools and school districts as something separate and independent of the ordinary municipal governments. The same reason will apply to other articles in the Constitution where school districts are mentioned and poor districts are not named. In Article IX, Sections 8 and 10, on taxation and finance, school districts are named, but poor districts are not. Certainly these sections were intended to include all officers, bodies or departments, that

could involve a community in debt or who managed the affairs of such community. It was no more necessary to specify poor districts than to specify police districts or road districts, or to specify township auditors."

[1]Commonwealth v. Patton, 88 Pa. St. 258; Scowden's Appeal, 96 Pa. St. 422.

[2]McCarty v. Commonwealth, 110 Pa. St. 243; Morrison v. Bachert, 112 Pa. St. 322.

[3]City of Scranton v. Silkman, 113 Pa. St .191.

[4]Frost v. Cherry, 122 Pa. St. 417.

[5]Commonwealth v. Anderson, 178 Pa. St. 171.

[6]Jenks v. Sheffield, 135 Pa. St. 400.

[7]Straub v. Pittsburg, 138 Pa. St. 356.

In connection with the foregoing question as to poor districts, reference may be made to the remarks of his Honor, Judge SMITH (*supra*), page 134, as to the exercise of the police power, and to the cases cited under the paragraph relating to the construction of the provisions in question and principally to what is said of the meaning of the word "affairs." It appears that this word is not confined to governmental matters or public affairs. Thus, in Frost v. Cherry, 122 Pa. St. 417, the Act in question related to fences; in Commonwealth v. McCandless, 21 W. N. C. 162, it related to liquors; in Commonwealth v. Hough, 1 D. R. 51, it related to milk; in Commonwealth v. Carey, 2 C. C. R. 293, it related to the operation of insolvent laws upon criminals; in Commonwealth v. Farley, 6 C. C. R. 433, it related to mineral water bottles; in Bowen v. Tioga County, 6 C. C. R. 613, it related to dogs. No question appears to have been raised in these cases as to the unconfined nature of the police power, the exercise of which was involved in some or all of them. They assume or declare that the matters mentioned relate to local affairs. And see Philadelphia v. Cemetery Company, 162 Pa. St. 105.

In Commonwealth v. Mercer, 9 C. C. R. 461, the Act of May 21st, 1879, P. L. 72, was held to be invalid. The first section of this Act repealed Section 7 of the salary Act of March 31st, 1876; the second section provided that it should

be the duty of the councils of cities of the first class to fix the salaries of certain officers and the number of clerks and employés of certain other officers. The Act of July 5th, 1883, P. L. 182, repealed certain provisions of the salary Acts, except so far as the same applied to cities of the first class, and in Section 2 made provisions for counties containing less than 500,000 and more than 300,000 inhabitants. This Act was held invalid in the same case; both Acts were held to be local and special.

The Acts of April 20th, 1876, P. L. 44, and May 24th, 1878, P. L. 133, providing for and regulating appeals from assessments for taxation, regulate the affairs of counties and are therefore invalid: Appeal of Lake Shore & Michigan Southern Railroad Company, 1 C. C. R. 327, and see Scranton v. Silkman, 1 C. C. R. 329, 113 Pa. St. 191; also Pennsylvania Railroad Company's Appeal, 3 C. C. R. 162.

The Act of June 13th, 1883, P. L. 99, relating to the discharge of prisoners from jail without proceeding under the insolvent laws is invalid by reason of its excepting counties containing a city co-extensive with the county: Commonwealth v. Carey, 2 C. C. R. 293; s. c., Carey's Petition, 43 Leg. Int. 384. In this case his Honor, Judge YERKES, said: "Why there should be one procedure prescribed for convicts who seek discharge from a Philadelphia prison and another from those in the other prisons of the State, affecting differently their liability to confinement, may be left to surmise. Crime is the same in whatever county of the State committed or punished, and the duties of those upon whom rests the administration of the laws affecting the detention of prisoners ought to be the same, and the liability of convicts to imprisonment should be uniform throughout the Commonwealth. That the Constitution of 1874 does not intend that such an anomaly in our laws shall exist is clear. It declares, Article III, Section 7, that 'the General Assembly shall not pass any local or special law creating offices or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election, or school districts.' 'Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery, or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, etc.' This Act is unquestionably within the prohibited

class. Is it a local or special Act? It does not contain a classification of cities or counties, according to population, but, by proviso, the one county of the State which answers the description of it is excluded from the operation of the law. This is what it was said in Davis v. Clark, 15 W. N. C. 209, could not be done. The proviso does not classify, or attempt to classify, the county of Philadelphia. It does not refer to it by name, but contains words of description which apply to it alone and exclude it from the operation of the Act. This makes the Act local, just as clearly as would words limiting an Act to the counties bordering on the river Delaware, or to the county containing the State capitol. In my opinion the proviso renders the Act unconstitutional."

The Act of May 3d, 1878, P. L. 43, authorizing the courts of common pleas to change, alter, and direct the mode of preparing and keeping indexes in the several courts of record, and for preparing, making, and substituting new indexes for old indexes or parts thereof is invalid because by Section 6 of the said Act it is declared that the provisions thereof shall not apply to counties having a population of over 400,000. The Act is a local law regulating the affairs of counties and prescribing the powers and duties of county officers. It also violates Article V, Section 26, of the Constitution, which provides that the jurisdiction and powers of all courts of the same class or grade shall be uniform: Beaver County Indexes, 6 C. C. R. 525.

The Act of June 8th, 1891, P. L. 214, a re-enactment with amendments of the Act of May 8th, 1889, P L. 123, authorizing an action of *assumpsit* against counties, boroughs, and townships for bounty, by veterans, soldiers and sailors of the War of the Rebellion who were accredited to such borough, township, or county, providing that the statute of limitations should not be a bar to such action if commenced within a certain time was held invalid in Cole v. Economy Township, 3 D. R. 699, because it prescribed a limitation for suits against corporations different from those against natural persons. The constitutional provision in question was held to be broad enough to include not only private but municipal and *quasi* municipal corporations as well. The original Act was held invalid for other reasons in Bearce v. Fairview Township, 9 C. C. R. 342; s. c., 21 W. N. C. 211.

The Act of June 2d, 1881, P. L. 41, making all taxes, whether county, township, poor, school, or municipal, as-

sessed upon real estate a first lien, providing for the collection of such taxes and a remedy for false returns, is invalid because cities of the first, second, and fourth classes are excepted from its provisions. It thus violates Article III, Section 7, of the Constitution, forbidding special laws regulating the affairs of counties and municipalities, and Article IX, Section 1, requiring the assessment and collection of taxes to be by general laws: Townsend v. Wilson, 7 C. C. R. 101; Miller v. Cunningham, 7 C. C. R. 500; Bryn Mawr v. Anderson, 10 C. C. R. 442; Ancona v. Becker, 3 P. D. R. 86; Van Loon v. Engle, 171 Pa. St. 157.

The Act of June 1st, 1883, P. L. 58, "empowering and directing county commissioners of any county to purchase ground at the county seat for the erection thereon of such building or buildings as may be necessary for the accommodation of the courts, and of the several officers of the county, and for the reception and safekeeping of the records and other papers in charge of such officers; and also such other building or buildings as may be necessary and proper for the purposes of a county jail or workhouse, when occasion shall require the erection of such building or buildings, and in case the said ground cannot be obtained by agreement with the owner or owners at a reasonable price in the estimation of said commissioners then to resort to condemnation," is invalid by reason of the proviso to the last section that the Act shall not apply to counties containing cities co-extensive with the county: Chester County Court House, 7 C. C. R. 212. See Act April 26th, 1889, P. L. 55, by which the proviso was repealed.

The Act of April 25th, 1889, P. L. 52, authorizing the county commissioners of the several counties to furnish office furniture, etc., to county officers "located in the county buildings at the county seat," is valid: Young v. Bradford County, 7 C. C. R. 428.

The Act of June 6th, 1893, P. L. 328, entitled "An Act providing for the relief of needy, sick, injured, and in case of death, burial of indigent persons whose legal place of settlement is unknown," is invalid. In the opinion in this case his Honor, Judge CRAIG, said: "We are further asked to say that the Act under consideration is unconstitutional, because it is a local or special law, and therefore falls within the inhibition of the seventh section of Article III, of the Constitution. Is the Act local or special? It provides 'that in each

and every county of this Commonwealth in which a poor or almshouse for the support, care, and shelter of the needy and indigent is not maintained by and at the county expense, it shall be the duty of the poor directors or overseers of the poor of the several poor districts in such counties to provide,' etc. It is operative, therefore, only in such counties where the indigent poor are not cared for 'by and at county expense'—where they are cared for 'by and at county expense' the Act is inoperative. It is a fact, of which we are bound to take judicial notice, that there is a large number of counties in this Commonwealth in which poor or almshouses are maintained 'by and at county expense.' Hence the Act must produce local or special results. This is manifest from its face. Such results the Constitution will not allow: City of Scranton v. Silkman, 113 Pa. St. 191; Davis v. Clark, 106 Pa. St. 377; Morrison v. Bachert, 112 Pa. St. 322; McCarthy v. Commonwealth, 110 Pa. St. 243; Commonwealth v. Patton, 88 Pa. St. 258. In our judgment this Act is local or special legislation under the attempted disguise of a general law. Of all forms of special legislation this is the most vicious: Scowden's Appeal, 96 Pa. St. 422; Morrison v. Bachert (*supra*), 330. Moreover, it is said that a statute which relates to particular persons or things of a class is special, and comes within the constitutional prohibition: Wheeler v. Philadelphia, 77 Pa. St. 338; Lehigh Valley Coal Company's Appeal, 164 Pa. St. 44. We are of opinion that this statute relates to particular things of a class, and is therefore special:" Conyngham Township Poor District v. County of Luzerne, 17 C. C. R. 83.

1. Local Affairs of Political Subdivisions of the State.

2. Cities.

It is not properly within the purposes of class legislation relating to cities to give to a *scire facias sur* municipal claim the added effect of a *scire facias* to revive and continue the lien for five years,[1] nor is an Act providing for the incorporation of street railways,[2] nor one relating to the opening and widening and assessment and payment of damages and benefits for the opening, widening, and change of grade of streets and regulating proceedings therein, which attempts to intro-

duce a new method of procedure and create a special mode of exercising judicial powers.[3]

School affairs are not municipal subjects.[4] The laying out of highways, the decision of the question when their opening shall take place, the institution of proceedings therefor, and their grading, paving, sewering, and lighting, are municipal matters, but the judicial proceedings incident to the exercise of the power of eminent domain must be conducted under general laws. Such jurisdiction is not within the principle of classification.[5]

The subject of the grading and paving of streets is clearly and exclusively one for municipal control. The power to collect the cost of the work so done by any appropriate form of taxation is a municipal power, therefore an Act upon this subject relating to the one of the classes of cities is valid, in so far as it applies in such cases the regular and settled course of procedure, as, for example, the filing of liens for assessments with the usual procedure thereunder. It is doubtful, however, whether any provision varying the usual course of procedure in such matters, as by providing a special period of limitation, duration of lien, or as to the effect of a sheriff's sale, would be valid.[6]

It is doubtful whether a statutory provision for a perpetual lien of taxes in cities of the first class is valid.[7]

The regulation of street railway motive power in cities is a proper subject of class legislation for cities.[8]

The provision of a system of taxation for cities of a certain class is valid because the power to levy and collect taxes is one properly pertaining to the regulation of the corporate powers of classes of cities.[9]

The annexation of adjacent territory is a matter proper for legislation for classes of cities.[10] An Act regulating the collection of taxes in the boroughs and townships of the Commonwealth is general.[11]

An Act to make taxes, whether county, township, poor, school, or municipal, assessed upon real estate, a first lien,

and to provide for the collection of such taxes and a remedy for false returns, excepting certain classes of cities, is invalid.[12]

A provision in an Act by which claims for overdue taxes, levied for city, school, or poor purposes, and water rents, in cities of the second class, filed in court, shall be liens on the real estate described therein without regard to whether the owner is named therein or not, and that a judicial sale of such real estate shall vest a good title thereto in the purchaser is invalid.[13]

[1]Philadelphia v. Haddington Church, 115 Pa. St. 291.

[2]Weinman v. Passenger Railway Company, 118 Pa. St. 192.

[3]In re Ruan Street, 132 Pa. St. 257.

[4]Commonwealth v. Reynolds, 137 Pa. St. 389; Chalfant v. Edwards, 173 Pa. St. 246.

[5]Wyoming Street, 137 Pa. St. 494; Pittsburg's Petition, 138 Pa. St. 401.

[6]Scranton v. Whyte, 148 Pa. St. 419.

[7]Philadelphia v. Kates, 150 Pa. St. 30.

[8]Reeves v. Philadelphia Traction Company, 152 Pa. St. 153.

[9]Commonwealth v. Macferron, 152 Pa. St. 244.

[10]Harris's Appeal, 160 Pa. St. 494; and see McAskie's Appeal, 154 Pa. St. 24; see also Millvale Borough, 43 P. L. J. 411, as to Act of May 8th, 1895, P. L. 56.

[11]Commonwealth v. Lyter, 162 Pa. St. 50.

[12]Van Loon v. Engle, 171 Pa. St. 157.

[13]Safe Deposit and Trust Company v. Fricke, 152 Pa. St. 231; McKay v. Trainor, 152 Pa. St. 242; and see Commonwealth v. Macferron, 152 Pa. St. 244. And see further in note below.

The Act of March 22d, 1877, P. L. 16, is entitled "An Act in relation to cities of the second class, providing for the levy, collection, and disbursement of taxes and water rents." It provides for the levy and collection of water rents in such

cities and for the levy and collection of all taxes required to defray the expenses of all the departments of such cities whether legislative, executive, or administrative, "including schools or boards of education or poor boards." It expressly declares in Section 3 that "the educational school and poor departments shall be departments of the city government," and all the provisions of the Act relate to the water rents and taxes to be levied and collected for the purposes above expressed. It provides for separate estimates for the different purposes to be submitted to the Finance Committee of Councils and empowers the Councils to levy the taxes. The funds raised for the different purposes are required to be kept separate. The levy is required to be made in January and the taxes are required to be paid one-half in March and the other half in September. The business tax and water rents are due in June. The taxes are levied upon the "estates, real and personal, subject to taxation within such cities." Unpaid taxes and water rents are delinquent at the end of the month in which they are due, and lists of such delinquent taxes and water rents are given to the delinquent tax collector, whose appointment is provided for, by the city treasurer on or before the 15th of the following month. The collector is given power to collect the same out of the real or personal estate of the owner, to levy and sell personal estate after thirty days, and to direct sale of real estate after six months. It is made his duty to procure accurate descriptions of the real estate on which delinquent taxes have been assessed and to file liens therefor in the office of the prothonotary. "Provided, however, that in cases where the amount of taxes or water rents due shall not exceed $20 the real estate shall not be exposed to sale, but the judgment against the same shall be kept revived." The Act subsequently refers to the costs of the sheriff and prothonotary, but there is in the Act no express provision for, or express reference to, a proceeding by *scire facias* on the lien. So much precedes Sections 11 and 12, which are as follows:

"Section 11. All taxes and water rents levied for any purpose in cities of the class aforesaid shall remain liens until fully paid and satisfied, and shall not be divested by any judicial sale except to the extent to which distribution shall be made out of the proceeds of such sale.

"Section 12. All taxes and water rents filed as liens in default of payment shall be liens on the real estate whether the

real owner is named or not, and a sale upon the same as against the party assessed shall vest a good title in the purchaser thereof. *Provided*, that the real owner of any property so sold may redeem the property within one year upon petition to the court of common pleas of the county and order of said court, by payment to the purchaser of the amount of the bid and ten per centum additional, the cost of advertising and all expenses incident to the sale."

The remaining provisions of the Act are not material to the purpose.

In Pittsburg v. Hughes, 13 C. C. R. 535, decided in September, 1893, it appeared by a case-stated that the taxes in question, levied pursuant to the foregoing Act for the year 1890 against John Hughes, were filed of record in the office of the prothonotary in November, 1891, and a *scire facias* was thereupon issued. The case-stated was upon this *scire facias*. It further appeared that John Hughes died in 1889, and that his administrator had sold his real estate at orphans' court sale in December, 1890, and that distribution of the fund had been made by that court in July, 1891. The fund exceeded the amount of taxes due, but this claim thereon was not presented. His Honor, Judge STOWE, was of opinion that the terms of the Act of 1877, if valid, were sufficient to preserve the lien notwithstanding, and thus the main question was presented, and as to this he said: "It is now well settled that laws limited to a single class of cities fall within the constitutional prohibition if they relate to subjects not within the purposes of classification.

"Undoubtedly all the matters relating to the assessment of taxes for municipal purposes, the filing of liens therefor and the proceeding by which they may be collected are proper municipal purposes, but the eleventh section which undertakes to establish a rule different from the general law, is attempting to do that which is local in its character and not within nor connected with the organization or administration of the city government or the regulation of municipal affairs. And it also seems to be in conflict with the section of the Constitution prohibiting the prescribing the effect of judicial sales of real estate by special or local laws." Judgment was therefore entered for the defendants.

In McKay v. Trainor, 152 Pa. St. 242, a judgment upon a special verdict was entered for the plaintiff, who claimed under the purchaser at a sheriff's sale upon a judgment against the

party assessed, under the foregoing Act, as owner of the real estate in question, a lien for the taxes having been entered against him and having been prosecuted by *scire facias* to judgment and sale. The judgment in this case was reversed for the reasons given in the case of Safe Deposit & Trust Company v. Fricke decided at the same time (152 Pa. St 231) in which case it appeared that the taxes there in question were not assessed against the registered owner but against one apparently not connected with the title, and that the real estate had been sold upon a judgment against such party upon a *scire facias* upon the tax lien.

The Act of May 23d, 1889, P. L. 277, entitled "An Act providing for the incorporation and government of cities of the third class," provides in Section 11 of Article XV of the Act that "all taxes assessed upon real estate shall be and continue to be liens thereon from the date of the levy thereof until paid." Provision is made for the registry of the lien in the office of the prothonotary, but its validity is not made dependent upon such registry. The twelfth section of the same article declares that "the lien of said taxes shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, or obligation, lien or responsibility, which the said real estate may become charged with or liable to, and shall not be divested by any judicial sale, except for so much of the proceeds of such sale as shall be actually applied thereto." In Smith v. Meadow Brook Brewing Company, 3 Lack. Jur. 154, his Honor, Judge ARCHBALD, sustained the validity of these provisions in a case where the tax lien was presented for allowance out of a fund for distribution. His opinion is quoted from at large in Chapter II, Section 11, page 196.

The validity of the Act of July 7th, 1885, P. L. 260, entitled an Act to prevent the adulteration of, and the traffic in, impure and unwholesome milk in cities of the first and second class was doubted: Commonwealth v. Hough, 1 P. D. R. 51.

The Act of March 17th, 1875, P. L. 62, authorizing Court of Common Pleas, No. 2, of Allegheny County, to appoint assessors in cities of the second class is invalid. It imposes an extra-judicial duty and is local and special, relating in effect to but one city and to one court: Pittsburg's Assessors, 7 Leg. Gaz. 117.

The Act of June 30th, 1885, P. L. 250, authorizing boards of health in cities of the first class to regulate house drainage,

the registration and licensing of plumbers and the construction of cess-pools, is valid. The objection to the Act was directed to those provisions of it which authorized the adoption by the board of suitable rules and regulations, which was alleged to be a delegation of the law-making power: Commonwealth v. Lambrecht, 3 C. C. R. 323; s. c., 44 Leg. Int. 196.

In Carbondale Township's Appeal, 5 C. C. R. 339, it was held that the provisions of the Act of May 24th, 1887, P. L. 204, for the annexation of territory to cities was valid. The objection made in this case was that the annexation and incorporation of adjacent territory into a city is indirectly a chartering of such territory, and that in view of the provision of Article XV. Section 1, of the Constitution, "that cities may be chartered whenever a majority of the electors of any town or borough having a population of at least 10,000 shall vote at any general election in favor of the same," the Legislature has no power by such annexation to impose a city government against the will of a majority of the electors, nor except where the population has reached the limit of 10,000. This objection was held to be unsound. It does not appear from the opinion that special objection was made upon any other constitutional ground.

The Act of May 4th, 1889, P L. 83, to authorize the election of constables for three years in cities of the second and third classes is valid. The constable is not strictly a township or ward officer, and his election is consequently not necessarily a township or ward affair, but is a matter belonging to the administration of the municipal government, and is therefore within the principle of classification: Reading's Constables, 8 C. C. R. 101.

The Act of April 28th, 1887, P. L. 263, entitled "An Act relating to the acquisition, purchase, and sale of real estate by the boards of guardians for the relief and employment of the poor in cities of the second class," is valid: Straub v. Pittsburg, 38 P. L. J. 89; affirmed, Straub v. Pittsburg, 138 Pa. St. 356.

Prescribing the effect of writs of *scire facias* upon municipal liens in cities of the first class as was done by the Act of June 27th, 1883, P L. 161, it is not valid class legislation for cities: Philadelphia v. Pepper, 2 C. C. R. 287; 16 W. N. C. 331; Philadelphia v. Haddington Church, 115 Pa. St. 291; nor is a provision giving a particular effect to the recovery of

a judgment against the city as provided in Article VIII, Section 3, of the Act of June 1st, 1885, P. L. 37, known as the "Bullitt Law:" Betz v. City of Philadelphia, 4 C. C. R. 481; 18 W. N. C. 121. In this case referring to laws relating to classes of cities which might be properly enacted, his Honor, Judge THAYER, said: "Such are laws relating to the public health, the public safety, to trade and commerce, police regulations, and the government and political affairs of the cities, but there must be some bounds to the powers to enact special or local legislation for the different classes of cities, if the Constitution is not to become a dead letter upon that subject." The provision in question was held to be in violation of that provision of the article of the Constitution which relates to the collection of debts.

1. LOCAL AFFAIRS OF POLITICAL SUBDIVISIONS OF THE STATE.

3. BOROUGHS.

The annexation of adjacent territory is a matter proper for legislation for cities by classes.[1] An Act regulating the collection of taxes in the boroughs and townships of the Commonwealth is general.[2]

[1]Harris's Appeal, 160 Pa. St. 494.

[2]Commonwealth v. Lyter, 162 Pa. St. 50; and see Evans v. Phillipi, 117 Pa. St. 226, and Bennett v. Hunt, 142 Pa. St. 257.

The Act of April 23d, 1889, P. L. 44, "authorizing the councils of incorporated boroughs to require the paving, curbing, and macadamizing of streets or thoroughfares, or parts thereof, and assess a portion of the cost of the same on the owners of property abutting thereon, and providing for the collection of the same," is valid; it applies to all boroughs, although special charters may not call municipal authorities "councils:" Greensburg v. Laird, 8 C. C. R. 608.

The Act of June 11th, 1870, P. L. 150, supplementary to the general borough law of 1851, and the Act of May 17th, 1883, P L. 35, amendatory thereof are valid: Pottstown Borough, 1 Montgomery County, 189, affirmed 4 Montgomery County, 29.

1. LOCAL AFFAIRS OF POLITICAL SUBDIVISIONS OF THE STATE.

4. TOWNSHIPS.

An Act requiring the school directors of a certain township to levy a tax to reimburse certain persons for moneys expended to fill the township quota for drafted men is a local and special Act regulating the affairs of a township.[1]

An Act regulating the collection of taxes in boroughs and townships of the Commonwealth is general.[2]

An Act enabling taxpayers of townships and road districts to contract for making the roads at their own expense and paying salaries of township or road district officers and thereby preventing the levy and collection of road taxes therein is valid.[3]

[1]Montgomery v. Commonwealth, 91 Pa. St. 125.

[2]Commonwealth v. Lyter, 162 Pa. St. 50; and see Evans v. Phillipi, 117 Pa. St. 226, and Bennett v. Hunt, 142 Pa. St. 257.

[3]Lehigh Valley Railroad Company's Appeal, 164 Pa. St. 44; Philadelphia & Reading Coal and Iron Company's Petition, 164 Pa. St. 248.

1. LOCAL AFFAIRS OF POLITICAL SUBDIVISIONS OF THE STATE.

5. SCHOOL DISTRICTS.

The Act of July 3d, 1895, P. L. 588, entitled "An Act to establish and to regulate the affairs of school districts and subschool districts in cities of the second class, and to repeal all local and special laws inconsistent therewith," enacted in its first section that hereafter each city of the second class should constitute an independent public school district, known as the school district of the city of ————, and should be constituted, governed, controlled, and regulated in the manner prescribed by the Act, which contained an elaborate sys-

tem of legislation for such school districts. On the same day a separate Act was passed repealing certain local and special laws recited by their titles relating to the city of Pittsburg, P. L. 603. These Acts were held to be invalid.[1] In this case Mr. Justice WILLIAMS said, after referring to a number of cases cited: "In every instance we have asserted the same rule, saying that the effect of classification must not be carried beyond its purpose as declared in the original classification law, and that a law relating to any other subject, though embracing all the cities of any given class, or of all the classes into which cities are divided, is local and unconstitutional if the subject be one upon which local and special legislation is forbidden. The regulation of the affairs of school districts is such a subject. It is distinctly named in the list of subjects enumerated in the fifty-second section of Article III, upon which 'The General Assembly shall not pass any local or special law.'

"The precise point was under consideration in the Appeal of the City of Scranton School District, 113 Pa. St. 176, and we there held that 'if an Act regulating the affairs of school districts either produces or may produce local results it offends against Article III, of the Constitution, and is therefore void.'

"The Act now before us was passed to establish a local system. Its results were intended to be local, and only local. They can by no possibility be anything but local. It is therefore squarely within the rule laid down in the Appeal of the Scranton School District, as well as squarely within the words of the constitutional prohibition. It is beyond the power of the Legislature to enact, and absolutely void." The repealing Act was held to be void for want of publication of notice.

[1] Chalfant v. Edwards, 173 Pa. St. 246.

In Engle v. Reichard, 4 C. C. R. 48, 4 Kulp, 361, decided prior to the case of Ayars' Appeal, it was held that the power of the Legislature to classify, and to pass laws

relating to given classes, included the power to classify school districts, that the Act of May 28th, 1887, P. L. 274, was valid, and that the provisions of the Act of May 28th, 1887, P. L. 274, constituting each city of the fourth, fifth, sixth, and seventh classes one school district were valid. In this case his Honor, Judge RICE, remarked: "Assuming, as the counsel do in their argument, that the affairs of the school district or districts within the territorial limits of a city are entirely distinct from the municipal affairs, and then carrying out the proposition as thus understood to its logical conclusion would lead to results which, we believe, the learned counsel would themselves declare never were contemplated by the framers of the Constitution. Such an interpretation would not only prevent all legislation applying exclusively to school districts in cities of certain specified class or classes, but also legislation applying to school districts in cities as distinguished from boroughs and townships. That the subject-matter of such legislation might be of a character which would make the law unconstitutional because it did not apply uniformly to all school districts of the Commonwealth, we do not deny. But we are not convinced that a law relating exclusively to the formation of school districts in cities or boroughs, or vesting the control of the affairs of such districts, or specifying the number or mode of electing members of the board of directors in such districts, would be local or special because it did not apply uniformly throughout the Commonwealth so as to include school districts in townships. Under such an interpretation of the constitutional provision against special legislation, the machinery of the State government would indeed 'be so bolted and riveted down by the fundamental law as to be unable to perform its necessary functions.' It is true that a school district is a *quasi* corporation, and, as such, to a certain extent, at least, may be entirely distinct from and independent of the municipal division of the State within which it may be located. Indeed, it is in the power of the Legislature, in the creation of school districts under a general law, to entirely ignore the lines of such municipal divisions: Colvin v. Beaver, 94 Pa. St. 388. But does it follow because a school district is, in a sense, independent of and distinct from the city or borough, that a law, to be general, for the creation, division, or change of school districts, or for the election of directors must ignore city, borough, and ward lines and be framed according to a plan or classification, if you please, that

would apply equally well in all particulars in townships? We think not."

The second section of the Act of May 23d, 1889, P. L. 274, constituting each city of the third class a single school district, providing for the election for its school controllers, the levy and collection of taxes and the management of its affairs is invalid because cities of the first and second classes are excluded from its operation. After reviewing previous cases, his Honor, Judge RICE, concluded the opinion as follows: "We return, now, to an application of the principle enunciated in the above cases. The management of public schools is not one of the corporate powers of cities of the third class and school directors are not corporate officers thereof. Furthermore, we are not convinced that there is any necessity springing from manifest peculiarities other than such as are due to existing special and local legislation, distinguishing school districts in cities of one class from those in other classes, which imperatively demand legislation for the management of the affairs of that class of districts which would be useless and detrimental to other city school districts. It follows that the section under consideration cannot be sustained upon the ground that cities are now classified for the purposes to which it relates, or upon the ground that classification is necessary and allowable for those purposes:" Commonwealth v. Reichard, 8 C. C. R. 563; s. c., 5 Kulp, 540..

In another case decided by the same learned judge at the same time (Commonwealth v. Reynolds, 8 C. C. R. 568, reversed Commonwealth v. Reynolds, 137 Pa. St. 389; and see Chapter II, Section 6, option under classification Acts), the validity of the Act of May 23d, 1889, P. L. 274, Sections 1 and 9, were sustained; Section 1 provided that each city of the third class hereafter incorporated shall constitute a school district to be termed a school district of the city of ————; the ninth section provided that any city of the third class now incorporated may accept and become subject to the provisions of the Act by resolution of the school boards of such city, duly passed by a majority of the members elected to each of the separate districts thereof; the section further provided that upon the exercise of the option such city shall constitute a school district within the meaning of this Act, and be subject to the provisions of the same, any provision of any local or special law to the contrary notwithstanding. After sustaining the option principle of the Act by

showing that other cities were by existing laws single school districts, and that therefore it was not necessary to extend the option beyond those cities not in harmony with the general law, that the exercise of the option would result in every city of the Commonwealth being a single school district, and that the tendency of the exercise of the option was to uniformity, the learned judge concluded that Sections 1 and 9 standing alone would be valid and proceeded to consider the question whether those sections could be sustained notwithstanding Section 2 and possibly others were invalid. His conclusion is thus expressed: "Two objects were intended to be accomplished by the Act of 1889; first, consolidation of school districts of cities of the third class; second, government of all school districts in cities of the third class. The intention as to the second object has failed of effect, but not as to the first as a necessary consequence. It is a question of intention, and, upon a fair view of the whole Act, and having regard to the weight of authority, we conclude that the provisions for the accomplishment of the first object should be sustained."

The Act of June 4th, 1885, P. L. 108, entitled "An Act to prohibit members of boards of school control, in cities of the third class, from holding any office of emolument under, or being employed by said board," is invalid, and so is the forty-first section of the Act of May 23d, 1874, P. L. 230-254, which provides that each city of the third class shall constitute one school district and regulates the school affairs of school districts in such cities. The opinion in this case follows Van Loon v. Engle, 171 Pa. St. 157, and Chalfant v. Edwards, 173 Pa. St. 246: Gaston v. Graham, 18 C. C. R. 265; s. p., Baker v. McKee, 6 P D. R. 599.

2. HIGHWAYS.

Provisions as to highways.

Article III, Section 7, Clause 5. Authorizing the laying out, altering, or maintaining roads, highways, streets, or alleys.

Article III, Section 7, Clause 7. Vacating roads, town-plats, streets, or alleys.

An Act relating to the opening and widening and assessment and payment of damages and benefits for the opening,

widening, and change of grade of streets in cities of the first class and regulating proceedings therein, is rendered local by provisions essential to its execution relating to procedure and jurisdiction of courts in the exercise of the power of eminent domain.[1]

The subject of the grading and paving of streets is clearly and exclusively one for municipal control. The power to collect the cost of the work so done by any appropriate form of taxation is a municipal power, therefore an Act upon this subject relating to one of the classes of cities is valid, in so far as it applies in such cases the regular and settled course of procedure, as, for example, the filing of liens for assessments with the usual procedure thereunder. It is doubtful, however, whether any provision varying the usual course of procedure in such matters as by providing a special period of limitation, duration of lien, or as to the effect of a sheriff's sale, would be valid.[2]

[1]In re Ruan Street, 132 Pa. St. 257; and see Wyoming Street, 137 Pa. St. 494; Pittsburg's Petition, 138 Pa. St. 401.

[2]Scranton v. Whyte, 148 Pa. St. 419.

3. Judicial Matters.

Provisions as to judicial matters.

Article III, Section 7, Clause 17. Regulating the practice or jurisdiction of or changing the rules of evidence in any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery, or other tribunals. Providing or changing the method for the collection of debts or the enforcing of judgments or prescribing the effect of judicial sales of real estate.

Article III, Section 7, Clause 18. Regulating the fees or extending the powers and duties of aldermen, justices of the peace, magistrates, or constables.

Article V, Section 26. All laws relating to courts shall be general and of uniform operation, and the organization, jur-

isdiction, and powers of all courts of the same class or grade so far as regulated by law and the force and effect of the process and judgments of such courts shall be uniform.

An Act authorizing appeals to courts of common pleas from tax assessments in counties of less than 500,000 population is local and special.[1]

An Act empowering the sheriffs and prothonotaries of the several counties to sue for their fees, providing special remedies in such cases, is special.[2]

The Act of 1879 enlarging civil jurisdiction of justices of the peace to $300 is not rendered local or special by the exclusion of cities of the first class from its operation, because the city of Philadelphia is intended by this statute and this city is governed by a special constitutional provision limiting the jurisdiction to $100.[3]

An Act giving *scire facias sur* municipal claim the added effect of a *scire facias* to revive and continue the lien for five years in cities of the first class is a local Act.[4]

The special regulation of the jurisdiction and procedure of courts of quarter sessions in relation to the opening and widening and assessment and payment of damages and benefits for the opening, widening, and change of grade of streets in cities of the first class is local.[5]

An Act confined to cities of a certain class regulating the procedure for the collection of damages and benefits and providing for the filing of liens and regulating the proceedings thereon is local.[6]

The subject of the grading and paving of streets is clearly and exclusively one for municipal control. The power to collect the cost of the work so done by any appropriate form of taxation is a municipal power, therefore an Act upon this subject relating to the one of classes of cities is valid in so far as it supplies in such cases the regular and settled course of procedure, as, for example, the filing of liens for assessments with the usual procedure thereunder. It is doubtful, however, whether any provision varying the usual course of procedure

in such matters as by providing a special period of limitation, duration of lien, or as to the effect of a sheriff's sale would be valid.[7]

It is doubtful whether a statutory provision for a perpetual lien of taxes in cities of the first class is valid.[8]

A provision in an Act that claims for overdue city, poor, and school taxes and water rents, in cities of the second class filed in court, shall be liens on the real estate described therein, without regard to whether the owner is named therein or not, and that a judicial sale of such real estate shall vest a good title thereto in the purchaser, is invalid.[9]

[1]Scranton v. Silkman, 113 Pa. St. 191.

[2]Strine v. Foltz, 113 Pa. St. 349.

[3]Wilkes-Barre v. Myers, 113 Pa. St. 395.

[4]Philadelphia v. Haddington Church, 115 Pa. St. 291.

[5]In re Ruan Street, 132 Pa. St. 257.

[6]Wyoming Street, 137 Pa. St. 474; Pittsburg's Petition, 138 Pa. St. 401.

[7]Scranton v. Whyte, 148 Pa. St. 419.

[8]Philadelphia v. Kates, 150 Pa. St. 30.

[9]Safe Deposit & Trust Company v. Fricke, 152 Pa. St. 231; McKay v. Trainor, 152 Pa. St. 242; and see Commonwealth v. Macferron, 152 Pa. St. 244. And see *supra*, under 2 CITIES and note thereunder.

The Act of June 8th, 1891, P. L. 214, a re-enactment with amendments of the Act of May 8th, 1889, P. L. 123, authorizing an action of *assumpsit* against counties, boroughs, and township for bounty, by veterans, soldiers and sailors of the War of the Rebellion who were accredited to such borough, township, or county, providing that the statute of limitations should not be a bar to such action if commenced within a certain time was held invalid, in Cole v. Economy Township, 3 D. R. 699, because it prescribed a limitation for suits against corporations, different from those against natural persons. The constitutional provision in question was held to be broad enough to include not only private but municipal and *quasi* municipal corporations as well. The original Act was

held invalid for other reasons in Bearce v. Fairview Township, 9 C. C. R. 342; s. c., 21 W. N. C. 211.

Prior to 1874 certain Acts of Assembly regulated the traffic in mineral water bottles and other bottles. This legislation was restricted to the city of Philadelphia. The Act of May 5th, 1876, P. L. 109, was passed to correct certain errors in transcription of one of these Acts, and provided in Section 2 that the certificate of the Secretary of the Commonwealth should be conclusive evidence of the publication, marking, and registering of mineral water and other bottles, required by the laws of the Commonwealth. This provision was held invalid because a special law changing the rules of evidence in judicial proceedings: Commonwealth v. Farley, 6 C. C. R. 433.

In Betz v. Philadelphia, 4 C. C. R. 481; s. c., 18 W. N. C. 121, it was held that the provisions of Article VIII, Section 3, of the Act of June 1st, 1885, P. L. 37, commonly known as "the Bullitt Law," relating to the recovery of judgments against the city of Philadelphia were invalid.

So much of the Act of May 23d, 1889, P. L. 277, providing for the incorporation and government of cities of the third class as refers to the assessment of damages for the opening of streets is invalid in that it attempts to provide a special rule for the assessment of the same, which does not apply to the entire State. The question of damages for the land taken by the right of eminent domain is one common to the whole State, and in no way peculiar to city government: Gardner v. Chester, 2 P. D. R. 162.

The Acts of February 14th, 1889, P. L. 6, and June 26th, 1895, P. L. 375, are valid. The first is entitled an Act to authorize the election of constables for three years, and provides for such election by the voters of every borough and township, and when the borough is divided into wards, of every ward. The latter Act is entitled an Act to amend the foregoing by providing for the election of a high constable in each of the boroughs of the Commonwealth for three years, and by correcting the ambiguity as to the beginning of the terms of office under the first mentioned Act: Allegheny County Constables, 17 C. C. R. 622.

The Act of May 4th, 1889, P. L. 83, to authorize the election of constables for three years in cities of the second and third class is valid. The constable is not strictly a township or ward officer, and his election is consequently not neces-

sarily a township or ward affair, but is a matter pertaining to the administration of the municipal government, and is therefore within the principle of classification: Reading's Constables, 8 C. C. R. 101.

The two foregoing cases are here placed because of the relation of the constable to the justice of the peace, and because of the relation to these officers to the general judicial system of the State.

The Act of March 17th, 1875, P. L. 62, authorizing Court of Common Pleas, No. 2, of Allegheny County, to appoint assessors in cities of the second class is invalid. It imposes an extra-judicial duty and is local and special, relating in effect to but one city and to one court: Pittsburg's Assessors, 7 Leg. Gaz. 117.

The Constitution in Article VIII, Section 17, provides that the General Assembly shall by general law designate the courts and judges by whom the several classes of election contests shall be tried, and regulates the manner of trial and all matters incident thereto. Construed with Article III, Section 7, and Article V, Section 26, this provision seems to create an exception; it recognizes the necessity and propriety of the classification of cases of contested elections, and provides for general laws governing the several classes, while. at the same time, it provides that the General Assembly shall *designate* the courts and *judges* by whom the several classes of election contests shall be tried. The Act of May 19th, 1874, P. L. 208, enacted to carry into effect Article VIII, Section 17, classifies cases of contested elections and puts in one class electors of presidents and vice-presidents of the United States, and all officers of the Commonwealth, except Governor and Lieutenant-Governor, who are required to be elected by the State at large. Jurisdiction of this class of cases is vested in the court of common pleas of Dauphin County, by name, and the two president judges, learned in the law, residing nearest to the court-house of the said judicial district.

The Act of June 10th, 1893, P L. 419, known as "The Baker Ballot Law," provides in Section 6 for the hearing of objections to certificates of nomination, and vests the jurisdiction in the court of common pleas of the county in which the certificate or paper objected to has been filed. Such certificates or papers as to certain officers are filed with the Secretary of the Commonwealth, and consequently jurisdiction of objections to them vests in the court of common pleas of Dau-

phin County. This exceptional jurisdiction has never been questioned, and undoubtedly finds its safe basis in the constitutional recognition of the necessity for legislation by classes in relation to election contests, a species of which, created since the adoption of the Constitution, includes the nomination of public officers.

Referring to the provision of Clause 17, of Article III, Section 7, which prohibits the prescribing the effect of judicial sales of real estate by local or special law, Mr. Buckalew (Buckalew on the Constitution, page 99) says: "It is believed that the true construction of the last clause of this (seventeenth) division of the section does not forbid the exercise by the Legislature of a remedial power known from the earliest times in the history of Pennsylvania, never the subject of popular complaint, and which the constitutional convention very certainly did not intend to destroy."

He then gives the parliamentary history of the clause in the convention, and concludes: "But upon the *whole language* of this clause in the seventh section, independent of its history and of the general argument above, it is plain that it can have no application to retroactive, curative laws. The *effect* of judicial sales is the subject-matter of the clause, whereas a proceeding of sale is the subject-matter of a curative, confirming Act. An Act may confirm or validate a sale—may cure a defect in the proceedings of sale, and cause the sale to take effect —while it does not determine what the effects or consequences of a sale shall be. In such case the operation and results of the confirmed sale will be left to the general law of the State, and remain untouched. The fallacy of an objection to such an Act, founded upon this clause, consists in confounding a question of sale or no sale, as affected by the Act, with a perfectly distinct and subsequent question, with which the Act will have nothing to do. The Legislature may confirm a sale in a proper case, but cannot prescribe an effect for the confirmed sale different from that prescribed by the general law of the State."

4. Liens.

Provision as to liens.

Article III, Section 7, Clause 1. Authorizing the creation, extension, or impairing of liens.

An Act authorizing the filing of mechanic's liens in certain cases, containing a proviso that it shall not apply to counties having over 200,000 inhabitants is local.[1]

An Act giving *scire facias sur* municipal claim the added effect of a *scire facias* to revive and continue the lien for five years in cities of the first class is a local Act.[2]

An Act providing special provisions relating to liens for municipal improvements in cities of the second class is local.[3]

The subject of the grading and paving of streets is clearly and exclusively one for municipal control. The power to collect the cost of the work so done by any appropriate form of taxation is a municipal power, therefore an Act upon this subject relating to the one of classes of cities is valid, in so far as it applies in such cases the regular and settled course of procedure, as, for example, the filing of liens for assessments with the usual procedure thereunder. It is doubtful, however, whether any provision varying the usual course of procedure in such matters as by providing a special period of limitation, duration of lien, or as to the effect of a sheriff's sale, would be valid.[4]

It is doubtful whether a statutory provision for a perpetual lien of taxes in cities of the first class is valid.[5]

A provision in an Act that claims for overdue city, school, and poor taxes and water rents, in cites of the second class, filed in court, shall be liens on the real estate described therein without regard to whether the owner is named therein or not, and that a judicial sale of such real estate shall vest a good title thereto in the purchaser, is invalid.[6]

An Act to make taxes assessed upon real estate, whether county, township, poor, school, or municipal, a first lien, and to provide for the collection of such taxes and a remedy for false returns, excepting certain classes of cities, is invalid.[7]

[1]Davis v. Clark, 106 Pa. St. 377.

[2]Philadelphia v. Haddington Church, 115 Pa. St. 291.

[3]Wyoming Street, 137 Pa. St. 494; Pittsburg's Petition, 138 Pa. St. 401.

[4]Scranton v. Whyte, 148 Pa. St. 419.

[5]Philadelphia v. Kates, 150 Pa. St. 30.

[6]McKay v. Trainor, 152 Pa. St. 242; Safe Deposit & Trust Company v. Fricke, 152 Pa. St. 231; and see Commonwealth v. Macferron, 152 Pa. St. 244. And see *supra* 2 CITIES and note thereunder.

[7]Van Loon v. Engle, 171 Pa. St. 157.

The Act of June 27th, 1883, P. L. 161, providing that writs of *scire facias* for the collection of municipal claims shall have the effect of writs to revive the lien of such claims, being confined to cities of the first class, is invalid, because it is a local Act infringing those provisions of the Constitution relating to the creation, extension, or impairing of liens, to providing or changing the methods for the collection of debts, and to the operation of laws relative to the jurisdiction of courts: Philadelphia v. Pepper, 2 C. C. R. 287; 16 W N. C. 131; Philadelphia v. Haddington Church, 115 Pa. St. 291.

5. TAXATION.

Provisions as to taxation.

Article III, Section 7, Clause 23. Exempting property from taxation.

Article IX, Section 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may by general laws exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity.

Article IX, Section 8. But any city the debt of which now exceeds seven per centum of such assessed valuation may be authorized by law to increase the same three per centum in the aggregate at any one time upon such valuation.

A special law requiring the levy of a tax for a specific purpose in a certain township is invalid.[1]

An Act authorizing appeals to courts of common pleas by owners of real estate from tax assessments in counties of less than 500,000 inhabitants is local and special.[2]

A law regulating the collection of taxes in boroughs and townships is general.[3]

The subject of the grading and paving of streets is clearly an exclusive one for municipal control. The power to collect the cost of the work so done by any appropriate form of taxation is a municipal power, therefore an Act upon this subject relating to the one of the classes of cities is valid in so far as it applies in such cases the regular and settled course of procedure. As, for example, the filing of liens for assessments with the usual procedure thereunder. It is doubtful, however, whether any provision varying the usual course of procedure in such matters as by providing a special period of limitation, duration of lien, or as to the effect of a sheriff's sale would be valid.[4]

It is doubtful whether a statutory provision for a perpetual lien of taxes in cities of the first class is valid.[5]

The provision of a system of taxation for cities of a certain class is valid because the power to levy and collect taxes is one properly pertaining to the regulation of the corporate powers of classes of cities.[6]

An Act enabling taxpayers of townships and road districts to contract for making the roads at their own expense and paying salaries of township or road district officers and thereby preventing the levy and collection of road taxes therein is valid.[7]

An Act which provides a system for taxing the fees of officers in counties having less than 150,000 inhabitants is valid.[8]

An Act to make taxes assessed upon real estate, whether county, township, poor, school, or municipal, a first lien, and to provide for the collection of such taxes and a remedy for false returns, excepting certain classes of cities is invalid.[9]

[1]Montgomery v. Commonwealth, 91 Pa. St. 125.

[2]City of Scranton v. Silkman, 113 Pa. St. 191.

[3]Evans v. Phillipi, 117 Pa. St. 226; s. p., Bitting v. Commonwealth, 20 W. N. C. 178; Swatara Township School District's Appeal, 1 Super Ct. 502; Commonwealth v. Lyter, 162 Pa. St. 50.

[4]Scranton v. Whyte, 148 Pa. St. 419.

[5]Philadelphia v. Kates, 150 Pa. St. 30.

[6]Commonwealth v. Macferron, 152 Pa. St. 244.

[7]Lehigh Valley Railroad Company's Appeal, 164 Pa. St. 44; Philadelphia & Reading Coal and Iron Company's Petition, 164 Pa. St. 248.

[8]Commonwealth v. Anderson, 178 Pa. St. 171.

[9]Van Loon v. Engle, 171 Pa. St. 157. And see note Chapter I, Section 1, page 98, *supra*.

The validity of the Act of May 12th, 1897, P. L. 56, known as the Direct Inheritance Tax Law, has not been finally determined. The lower courts are not agreed as to its validity: Portuondo's Estate, 19 C. C. R. 419, 6 P. D. R. 462; Blight's Estate, 19 C. C. R. 426, 6 P. D. R. 459; Lacy's Estate, 19 C. C. R. 431, 6 P. D. R. 499.

The provisions of the Act of March 18th, 1875, P. L. 7, supplementary to the Act of May 23d, 1874, relating to the classification of property for purposes of taxation are not in violation of Article IX of the Constitution. By Section 4 of the supplement, real estate is classified as built-up property, rural or suburban property, and property used for agriculture or farming purposes, including untillable land; the latter is subjected to one-half of the tax rate, the rural or suburban to not exceeding two-thirds, and built-up property to the full rate: Commonwealth v. Halstead, 1 C. C. R. 335; s. c., 2 C. P. Rep. 247. The judgment below was reversed in Commonwealth v. Halstead, 18 W. N. C. 385, and Sections 1, 2, 3, 4, and 5, of the Act of March 18th, 1875, were held to be invalid on the authority of Scranton School District's Appeal, 113 Pa. St. 176, by reason of the option feature of the said Act. As to the validity of the classification see Kitty Roup's Case, 81* Pa. St. 211.

The Act of June 2d, 1881, P. L. 41, making taxes assessed upon real estate, whether county, township, poor, school, or municipal, a first lien, providing for the collection of such

taxes, and a remedy for false returns, is invalid, because cities of the first, second, and fourth classes are excepted from its provisions. It thus violates Article III, Section 7, of the Constitution, forbidding special laws regulating the affairs of counties and municipalities, and Article IX, Section 1, requiring the assessment and collection of taxes to be by general laws: Townsend v. Wilson, 7 C. C. R. 101; Miller v. Cunningham, 7 C. C. R. 500; Bryn Mawr v. Anderson, 10 C. C. R. 442; Ancona v. Becker, 3 P. D. R. 86; and see Van Loon v. Engle, 171 Pa. St. 157.

The Act of February 14th, 1889, P L. 7, providing for the election of assessors for three years in the several boroughs and townships of the Commonwealth is valid: Commonwealth v. Coleman, 9 C. C. R. 90. In this case his Honor, Judge WICKHAM, said: "The obvious meaning of the language, above quoted from the Constitution, is, that legislation, affecting the affairs of any one of the several classes disjunctively named, shall apply to every member of that particular class. If this be done, the legislation is not local or special: Evans v. Phillipi, 117 Pa. St. 226. The statute under consideration includes all townships and all boroughs in the State. So far, therefore, as it affects townships, and boroughs not divided into wards, it does not offend against the Constitution.

"A more difficult question would be presented if the controversy related to the office of ward assessor in a borough. The second section of the Act provides 'that, when any borough has been or shall be divided into wards, or any township has been or shall be divided into election districts,' the Act shall apply to such districts and wards. This section, if held constitutional, in whole or in part, by reason of its non-application to wards in cities, would not invalidate the enactment, so far as it operates on ordinary boroughs and townships. Indeed, it might be dropped from the statute altogether and still leave the provisions as to the two clauses last mentioned, complete and intelligible. It is not necessary, therefore, to decide, whether fixing the terms of office of ward assessors is a regulation of the 'affairs' of wards, within the meaning of the Constitution, nor whether the Legislature is prohibited from recognizing the intrinsic and important differences that often exist between the affairs of wards in boroughs and wards in cities." S. P., Commonwealth v. Green, 7 Kulp, 151. The lat-

ter case affirmed the validity also of the amendatory Act of May 8th, 1889, P. L. 133.

The Act of June 25th, 1885, P. L. 187, provided for the election of borough and township tax collectors in each borough and township of the Commonwealth at the February election; for the filling of vacancies by the court of quarter sessions; required an official oath and bond; provided that the several county, borough, township, school, and other authorities now or hereafter empowered to levy taxes within the several boroughs and townships, should issue their respective duplicates to such collector on or about the first of August in each year, with their warrants directing the collection of such taxes, excepting road taxes, which might be worked out; defined the powers and liabilities of such collectors; required books to be kept in a certain manner by the collector, subject to the inspection of each taxpayer; for public notices to be given of the receipt of the duplicate; provided for a reduction for prompt payment of the taxes, and a charge in case of delinquency; provided for the collector's compensation, exoneration and accounting; excepted unseated lands, taxes charged upon which were to be collected as formerly; repealed inconsistent general Acts, but saved from repeal taxes collection of which was regulated by a local law. The validity of this Act was affirmed in Evans v. Phillipi, 117 Pa. St. 226; the principal objection in that case being directed to the clause saving special laws. The validity of the Act was affirmed in Bitting v. Commonwealth, 20 W. N. C. 178, and again in Bennett v. Hunt, 148 Pa. St. 257, upon an appeal from the decree of the court below dissolving a preliminary injunction and without an opinion. The Act seems to have been objected to in the court below on the ground of alleged defect in title, the latter not being thought comprehensive enough to include a provision as to counties, and because the rebate for prompt payment was supposed to result in a want of uniformity.

In Commonwealth v. Lyter, 162 Pa. St. 50, the validity of the Act was again affirmed. In this case the opinion of his Honor, Judge McPherson, in the court below, summarizes the history of the litigation of this Act as follows: "Coming, then, to the principal question in the case, namely, the constitutionality of the Act of 1885, so far as concerns the collection of county and State taxes, we may briefly observe, without discussing the cases, that various opinions have been expressed by the lower courts upon various aspects of the

statute. See Commonwealth v. Scheckler, 1 C. C. R. 505; Commonwealth v. Bitting, 2 Id. 298; Keim v. Devitt, 3 Id. 250; Hannick's Bonds, 3 Id. 254; Commonwealth v. Lackawanna County Commissioners, 7 Id. 173; Commonwealth v. Swab, 8 Id. 111; and Evans v. Witmer, 4 Lanc. L. R. 105. The decision in Evans v. Phillipi, 117 Pa. St. 226, has not been regarded as settling anything beyond the precise point there raised, although the language used by Mr. Justice CLARK, on page 237, is so wide that it may be easily construed to declare deliberately the constitutionality of the statute as to the collection of all taxes in boroughs and townships, and not merely as to the collection of the school tax which alone was then in question. His words are these: 'We are of opinion, for the reasons expressed, that the Act of June 25th, 1885, must be regarded as a general law applying to the whole State, excepting in so far as its operation is obstructed by existing local statutes passed prior to the new Constitution, upon the repeal of which it will take effect throughout the State. Nor is the Act of 1885 obnoxious to Clause 27, Section 7, Article III, or to Section 1, Article IX, of the Constitution. What we have already said is sufficient to show why no such conflict exists. We hold the Act of 1885 to be a general law. It is a general law relating to the collection of taxes in boroughs and townships of the State; boroughs and townships are created by general laws, and the proper subjects of appropriate, independent, general legislation as such; and the Act establishes a general system peculiarly adapted to the convenience and necessities of the municipal divisions named.'

"Nevertheless, if there had been no later action by the Supreme Court than this, we would simply follow the decision of our own court in Commonwealth v. Swab (*supra*), and would hold the Act to be unconstitutional so far as the collection of county and State taxes is concerned. Since the case of Commonwealth v. Swab, however, Bennett v. Hunt, 148 Pa. St. 257, has been decided and reported, and we regard that decision as implying strongly that the collection of county taxes is constitutionally embraced by the Act. It is true that the appeal was from a decree dissolving a preliminary injunction, and therefore that no opinion was given upon the merits; but, as the constitutionality of the Act was distinctly questioned and distinctly affirmed in the court below, and as this question could not be affected by any facts which might ap-

pear in the further conduct of the case, it seems to us that the Supreme Court would not have permitted the tax to be collected if they had been satisfied that in this respect the Act was void."

In Evans v. Witmer, 2 C. C. R. 612; 4 Lanc. L. R. 105, the Act was held invalid as being a local law, and the provision that taxes shall be levied and collected under general laws was emphasized. Among other things, it was pointed out that school districts had not yet been classified, and until they were any Act affecting them must affect all alike.

In Hannick's Bond, 3 C. C. R. 254, the Act was thought to be special because it did not apply to cities, because it resulted in a want of uniformity in taxation by reason of the provision for discount for prompt payment, and charge for dilatory payment, no similar provisions existing in cities, and because of the creation of a new and peculiar office of collector of county taxes, to be exercised only in boroughs and townships, being therein elective, while in the remainder of the county the official function was discharged by an appointive officer.

In Commonwealth v. Commissioners, 7 C. C. R. 173, the Act was held invalid because of insufficiency of title, because special by reason of the difference in the manner of the collection of county taxes in boroughs and townships, and in cities, and because the charge and rebate result in a want of uniformity in taxation. As shown in the opinion above, a distinction was made in Commonwealth v. Swab, 8 C. C. R. 111, in which case, upon a return to a mandamus, his Honor, Judge SIMONTON pointed out the difference between State and county taxes, and such as were local to the borough or township. The validity of the Act was again affirmed in Swatara Township School District's Appeal, 1 Super. Ct. 502.

The cases collected under this head are principally those wherein Acts of Assembly have been challenged as being local. Those objected to as special, that is, as involving improper classification, have already been sufficiently referred to, as the question is really broader than the scope of this subject.

6. ELECTIONS.

Provisions as to elections.

Article III, Section 7, Clause 12. For the opening and conducting of elections, or fixing or changing the places of voting.

Article I, Section 5. Elections shall be free and equal.

Article VIII, Section 7. All laws regulating the holding of elections by the citizens or for the registration of electors shall be uniform throughout the State.

Article VIII, Section 17, Clause 2. The General Assembly shall, by general law, designate the courts and judges by whom the several classes of election contests shall be tried and regulate the manner of trial and all matters incident thereto.

Article VIII, Section 7, of the Constitution, is not self-efficient and hence the local system of voting in Luzerne County under the special Act of April 6th, 1868, P. L. 729, remained in force after its adoption.[1]

The Act of June 19th, 1891, P. L. 349, known as the Ballot Reform Act, is valid. It does not infringe Article VIII, Section 7, nor Article III, Section 7, of the Constitution.[2]

The provision of the Act of June 24th, 1895, P. L. 212, establishing the Superior Court that "no elector may vote either then or at any subsequent election for more than six candidates upon one ballot for said office," is valid.[3]

[1]Wright v. Barber (S. C.), 5 W. N. C. 444.

[2]Dewalt v. Commissioners, 1 P. D. R. 199; Ripple v. Commissioners, 1 P. D. R. 201; Meredith v. Lebanon County, 1 P. D. R. 220; affirmed *sub nom* Dewalt v. Bartley, 146 Pa. St. 529.

[3]Commonwealth v. Reeder, 171 Pa. St. 505.

7. Private Corporations, Etc.

Provisions as to private corporations.

Article III, Section 7, Clause 6. Relating to ferries or bridges or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State.

Article III, Section 7, Clause 25. Creating corporations or amending, renewing, or extending the charters thereof.

Article III, Section 7, Clause 26. Granting to any cor-

poration, association, or individual any special or exclusive privilege or immunity or to any corporation, association, or individual the right to lay down a railroad track.

Article III, Section 21, Clause 2. No Act shall prescribe any limitation of time within which suits shall be brought against corporations for injuries to persons or property, or for other causes different from those fixed by general laws regulating actions against natural persons, and such Acts now existing are avoided.

The Act of March 19th, 1879, P. L. 9, providing for the incorporation of street railways in cities of the second and third classes is invalid, because local and not general.[1]

The Act of May 8th, 1876, P. L. 147, provided, "Passenger railways in any and all cities of the first class . may use other than animal power . . . whenever authorized so to do by the councils of such city, and the limitations contained in any of the charters of passenger railway companies, restricting them to the use of horse power, be and the same are hereby repealed, provided," etc.

After showing that the regulation of public conveyances was a proper subject for municipal classification, and that the Act was not objectionable upon this ground, Mr. Justice MITCHELL said, referring to the Act: "It takes off restrictions previously existing as to the motive power of cars upon streets and commits the whole subject to the control of the cities themselves acting through their councils. This is its effect, and that is the test of its constitutionality. That incidentally it has affected and enlarged the charters of certain railway corporations, does not vitiate it as an exercise of unquestionable police powers over subjects within their proper province. The second clause of the Act expressly repealing the charter restrictions to horse power as a motor, is not an essential part of its substance, and might have been omitted without impairing its general scope and effect. It was manifestly added to prevent any question of the application of the Act to companies already chartered."[2]

[1]Weinman v. Passenger Railway Company, 118 Pa. St. 192.

[2]Reeves v. Philadelphia Traction Company, 152 Pa. St. 153.

The case of Weinman v. Passenger Railway Company (*supra*), was followed by Berks & Dauphin Turnpike v. Lebanon Electric Railway Company, 5 C. C. R. 467, and Seitz v. Lafayette Traction Company, Id. 469, holding the Act of May 23d, 1878, P L. 111, providing for the incorporation of such companies in cities of the third, fourth, and fifth classes and in the boroughs and townships of the Commonwealth to be invalid.

In the Boston Bridge Company's Case, 13 C. C. R. 190, the Act of May 6th, 1887, P. L. 92, amending the Act of April 29th, 1874, by providing for increased rates of tolls upon bridges, in certain cases, was held valid. The first mentioned Act provided for tolls on bridges generally, and further provided that any bridge, not wholly nor in part within the limits of any city of the first or second class within this Commonwealth, that shall hereafter be constructed or reconstructed, and the cost thereof shall be increased beyond the minimum by reason of the demands and requirement of navigation, the corporation owning the same may demand and receive tolls, not exceeding 50 per centum in excess of the rate provided, in any case where such increased rates do not produce a yearly revenue in excess of 6 per centum per annum upon the capital stock of such corporation. The question arose upon an application made to the court of quarter sessions, for authority to charge such increased tolls, by a bridge within the description of the provision, and the provision was sustained on the ground that a class was thus created and particularly described, and the reason therefore was expressly declared.

Article III, Section 7, Clause 25, above, forbids the passing of any local or special law creating corporations, or amending, renewing, or extending the charters thereof.

Article XVI, Section 10, Clause 2, declares that no law hereafter enacted shall create, renew, or extend the charter of more than one corporation. The latter clause appeared in the former Constitution in such relation to the context that it was doubted whether it related to any other private corporations than banks, and it was held not to relate to public political corporations: Moers v. Reading, 9 Harris, 188. As

to this clause, Mr. Buckalew (Buckalew on the Constitution, page 255) says: "Probably by inadvertence the last clause of the section was copied from the end of Section 25, Article I, of the old Constitution in copying Section 26 of same article for insertion in the new Constitution. By reference to the convention debates, it will be seen that when General White first proposed our present Section 10 as an amendment, it did not contain the clause in question. Apparently the clause slipped into the new text without consideration. It is an intruder (although a harmless one), because it has, in its new situation, no appropriate or proper office to perform." And see Cleveland, etc., Railroad Company v. Erie, 27 Pa. St. 380.

8. Cemeteries, Etc.

Provision as to cemeteries, etc.

Article III, Section 7, Clause 8. Relating to cemeteries, graveyards, or public grounds not of the State.

Cases within the provision against special laws relating to cemeteries, graveyards, or public grounds not of the State have been previously considered: Perkins v. Philadelphia, 156 Pa. St. 554; Philadelphia v. Cemetery Company, 162 Pa. St. 105; s. c. below, 3 P. D. R. 151; York School District's Appeal, 169 Pa. St. 70; s. c. below, Pottersfield, 8 York, 145.

9. Labor, Trade, Mining, or Manufacturing.

Provision as to labor, trade, mining, or manufacturing.

Article III, Section 7, Clause 24. Regulating labor, trade, mining, or manufacturing.

The Act of June 4th, 1883, P. L. 72, to enforce the provisions of the seventeenth article of the Constitution relative to railroads and canals, prohibiting undue discrimination in charges or facilities for the transportation of freight, is not a special law within the foregoing provision.[1] Nor is the Act of June 2d, 1891, P L. 176, entitled "An Act to provide for the health and safety of persons employed in and about the anthracite coal mines of Pennsylvania, and for the protection

and preservation of property connected therewith." It relates to all anthracite coal mines, and properly and legally defines what shall be regarded as such. It was objected that the Act was local and special because it applied to anthracite mines only, to only such of them as employed over ten men, because it was a regulation of labor applicable only to miners and laborers employed in certain anthracite mines, because it was a regulation applying only to certain anthracite mines and because only certain employers, to wit, of labor in certain anthracite mines, were subjected to liability not imposed on other employers, to wit, for negligence of fellow-servants of employés. The case was for death by negligence and the claim was made that the negligence, if any, was that of a fellow-servant. The judgment was reversed because the recovery was for an alleged liability to answer for the act of one over whom the defendant had no control, to wit, for the negligence of the mine foreman, whom the statute required to be employed to perform duties imposed on him by the statute.[2]

In this case Mr. Justice WILLIAMS said: "We are not prepared to hold the Act of 1891 to be unconstitutional as a whole. It relates to all anthracite coal mines and defines what shall be regarded as such mines. Coal may be taken out of the ground by farm owners for their own use, or it may be taken in such small quantities and for such local purposes as to make the application of the mining laws to the operations so conducted not only unnecessary but burdensome to the extent of absolute prohibition. Such limited or incipient operations are not within the mischief, to remedy which the mining laws were devised. They are ordinarily conducted for purposes of exploration or for family supply, and ought not to be classed with operations conducted for the supply of the public. The business of coal mining, like that of insurance, or banking, may be defined by the Legislature. The definition found in the Act of 1891 seems to us reasonable, to be within the fair limits of a legislative definition, and to exclude

only such operations as are too small to make the general regulations provided by the Act applicable to them. The ground on which we place our judgment is not, therefore, that the Act is local, but that the provisions of it which we have considered are in violation of the Bill of Rights."

The Act of May 7th, 1891, P. L. 44, amending the Act of June 12th, 1879, and extending the benefits of the same to persons employed in hewing, making, and hauling square timber, and in peeling, skidding, and hauling bark, is valid.[3]

[1]Hoover v. Pennsylvania Railroad Company, 156 Pa. St. 221.

[2]Durkin v. Kingston Coal Company, 171 Pa. St. 193.

[3]Hoffa's Appeal, 1 Super. Ct. 357.

In Commonwealth v. Isenberg, 4 P. D. R. 519, the Act of May 20th, 1891, P. L. 96, known as the semi-monthly pay law, was questioned under this provision, but the case was decided upon other grounds. In Commonwealth v. Jones, 4 Super. Ct. 362, the Act of May 15th, 1893, P. L. 52, entitled "An Act relating to bituminous coal mines, and providing for the lives, health, safety, and welfare of persons employed therein," was held valid on the authority of Durkin v. Kingston Coal Company (*supra*).

10. Special Privileges and Immunities.

Provision as to special privileges and immunities.

Article III, Section 7, Clause 26. Granting to any corporation, association, or individual any special or exclusive privilege or immunity, or to any corporation, association, or individual the right to lay down a railroad track.

The Act of March 23d, 1877, P. L. 25, entitled "An Act to empower the sheriff and prothonotaries of the several counties . . . to sue for their fees," infringes among others, the foregoing provision.[1]

[1]Strine v. Foltz, 113 Pa. St. 349; s. c., below, 1 C. C. R. 490.

In Foster v. Strayer, 19 C. C. R. 417, the validity of the Act of April 20th, 1876, P. L. 43, relating to actions for wages of manual labor, was doubted, in so far as it provided for the giving of bail absolute on appeal. Said his Honor, Judge WHITE: "This kind of legislation is of a most pernicious character. It is class legislation. If the Legislature can pass such an Act in reference to claims for 'wages of manual labor,' it can pass similar Acts in reference to any other class of claims, or it may extend the jurisdiction of magistrates in labor claims to $1,000, and require bail for the debt in case of appeal. Is not such legislation in violation of Article III, Section 7, of the Constitution of 1874? That section says: 'The General Assembly shall not pass any local or special law' on the various subjects mentioned, among which is this: 'Granting to any corporation, association, or individual any special or exclusive privilege or immunity.' Does not this Act of 1876 give a 'special privilege' to persons suing before a magistrate for 'wages of manual labor'? I am strongly inclined to this opinion."

The Act of May 8th, 1889, P. L. 123, authorizing an action of *assumpsit* against counties, boroughs and townships, for bounty, by veterans, soldiers and sailors of the War of the Rebellion who were accredited to such county, borough, or township, and providing that the statute of limitations should not be a bar to such actions if the same were commenced within two years from the date of the approval of the Act, was held invalid because local (not applying to cities), special (applying to particular persons, and granting them special privileges), and as a partial repeal of a general law, to wit, the statute of limitations: Bearce v. Fairview Township, 9 C. C. R. 342; s. c., 21 W. N. C. 211.

The Act of July 2d, 1895, P. L. 434, entitled "An Act to amend Section 1, of the Act of April 18th, 1893, P. L. 23, entitled an Act relative to the admission and instruction of children of soldiers of the late War of the Rebellion in the common schools of districts outside of those in which their parents or guardians or others entitled to their custody may reside," is invalid. It attempts to create a special privilege: Sewickley v. Osburn, 19 C. C. R. 257; s. c., 6 P. D. R. 211.

11. Partial Repeal of a General Law.

Provision as to partial repeal of general laws.

Article III, Section 7, Clause 27. Nor shall the General Assembly indirectly enact such special law by the partial repeal of a general law, but laws repealing local or special Acts may be passed.

The Act of May 8th, 1889, P. L. 123, authorized an action of *assumpsit* against counties, boroughs and townships, for bounty, by veterans, and provided that the statute of limitations should not be a bar to such action if commenced within two years from the passage of the Act. This in effect is a partial repeal of a general law, to wit, the statute of limitations.[1]

[1]Bearce v. Fairview Township, 9 C. C. R. 342; s. c., 21 W. N. C. 211; and see Cole v. Economy Township, 3 P. D. R. 699.

12. Cases Within General Law or Judicial Jurisdiction.

Provision as to cases within general laws or judicial jurisdiction.

Article III, Section 7, Clause 28. Nor shall any law be passed granting powers or privileges in any case where the granting of such powers and privileges shall have been provided for by general law, nor where the courts have jurisdiction to grant the same or give the relief asked for.

In Land Company v. Weidner,[1] the validity of the Act of March 12th, 1891, P. L. 53, to validate conveyances and other instruments which have been defectively acknowledged, was questioned. Said Mr. Justice Mitchell: "But it is said as applied to this case, the Act of 1891 would violate Section 54 of Article III, of the Constitution, that no law 'shall be passed granting powers or privileges in any case where the granting of such powers and privileges shall have been provided for

by general law, nor where the courts have jurisdiction to grant the same, or give the relief asked for.' The application of this argument is not quite clear. The section of the Constitution quoted is a prohibition against local and special laws, while the Act of May 12th, 1891, P. L. 53, is a general law applicable to all cases except those pending at the time of its passage. The exclusion of all retroactive force does not detract from its general character. If it be meant that the Act of May 25th, 1878, P. L. 149, already supplied a remedy, nevertheless the Legislature might provide a new and different one."

[1]Land Company v. Weidner, 169 Pa. St. 359.

13. NOTICE.

Provision as to notice.

Article III, Section 8. No local or special bill shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall be at least thirty days prior to the introduction into the General Assembly of such bill, and in the manner to be provided by law, the evidence of such notice having been published shall be exhibited in the General Assembly before such Act shall be passed.

In Perkins v. Philadelphia,[1] it was alleged that the Act in question was invalid because notice of the proposed legislative action was not published in Philadelphia at least thirty days before the introduction of the bill. As to this, Mr. Justice DEAN said: "It is not our duty to go behind the law to inquire whether all the precedent formalities have in fact been complied with. The evidence that notice has been published is to be exhibited to the General Assembly; it is not directed to be entered on the journals. The law before us is certified by both houses and approved by the Governor. We must presume the requirement as to notice was complied with; to this effect are all the authorities of numerous adjudicated cases on the same question."

In Chalfant v. Edwards,[2] wherein was in question the validity of the Act of July 3d, 1895, P. L. 603, entitled "An Act repealing an Act entitled 'An Act consolidating the wards of the city of Pittsburg for educational purposes, approved February 19th, 1855,'" Mr. Justice WILLIAMS said: "This is a local law passed to effect the repeal of the local Acts of 1855 and 1869. Such a law is not necessarily within the constitutional prohibition. To hold that it was would make the road to uniformity much more difficult than was intended. The repeal of the local laws is ordinarily made to open the way for the operation of general laws within the territory from which the local law had previously excluded them. Still, it is true that such a law is local within the meaning of Section 55, of Article III. Particularly is this true when the object of the repealing Act is not to make way for a general law but for another local one. In such case it is such a local law as the Constitution declares shall not be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected shall be situated. It is conceded that no notice of an intention to apply for the passage of a law repealing the local Acts of 1855 and 1869 was ever published in the city of Pittsburg. If this fact was not admitted our question might not be as free from difficulty as it now is. It is admitted. It was so treated in the court below. We have then a local law passed to repeal one local law in order to make way for another.

"It affects the people of the city of Pittsburg. They have a right to notice of the intention to apply for it. It now appears that without notice the parties interested procured the passage of this local law in plain violation of the Constitution. If it appeared that this question had been considered by the Legislature and that body had decided that sufficient notice had been given, or if the committee to which the bill was referred had reported that the constitutional requirement as to notice had been complied with, we might feel ourselves concluded by such action. But there is not the faintest sugges-

tion to be found anywhere that the subject of notice was ever before the mind of the Legislature or attracted the attention of the promoters of the bill. If we should hold that as a general rule, in the absence of any recital or proof upon the subject, notice should be presumed, yet the presumption cannot prevail when it is a conceded fact in the case that no notice was given. The only question then presented is over the validity of an Act passed in the face of a clear and positive constitutional prohibition. The learned judge of the court below was of opinion that as the form and manner of publishing notice was prescribed by the Act of 1874, the Legislature of 1895, having equal power in the premises, was not bound by the directions of its predecessor but might disregard them at its pleasure. The power of the Legislature to repeal the Act of 1874 cannot be doubted, but it had not been exercised. When this Act was introduced into the Legislature and when it came up on its final passage, the Act of 1874 was in full force, and the citizens of Pittsburg had a right to rely upon the observance of its provisions. The point made, however, does not relate to a compliance with the forms of the Act of 1874, but with the substance of the constitutional provision that makes notice in the locality, and by publication, an indispensable prerequisite to the passage of a local law. The Legislature of 1895, though not bound by the directions of its predecessor was bound by the fundamental law, and its power to pass the repealing Act depended on compliance with its mandates.

"We cannot agree, therefore, with the learned judge in regard to the validity of the repealing Act. It is invalid. The Acts of 1855 and 1869 are in full force, and the system of schools, school districts, and school directors built upon them in the city of Pittsburg has undergone no change whatever."

[1]Perkins v. Philadelphia, 156 Pa. St. 554.

[2]Chalfant v. Edwards, 173 Pa. St. 246.

Article III, Section 7, contains two provisions as to notice. In Clause 21 it is prescribed that no special law shall be passed affecting the estates of minors or persons under disability, "except after due notice to all parties in interest, to be recited in the special enactment." Section 8 prescribes that the evidence of the publication of notice required by it "shall be exhibited in the General Assembly before such Act shall be passed." The former provision is probably so made in order that the courts may determine whether the notice recited in the special enactment is sufficient in law; that is to say, whether as matter of law the parties notified, as recited, are all the parties in interest. As to the latter provision, the rule as stated in Perkins v. Philadelphia (*supra*); Chalfant v. Edwards (*supra*), may be regarded as an exceptional case. If the presumption of notice is not absolute, then the strange result might follow that an Act might be sustained in a real litigation, but fail in a case where both parties to it might wish to destroy the Act by an admission that no notice had been given.

TABLE OF CASES.

		PAGE
Ahl v. Rhoads,	84 Pa. St. 319.	115
Allegheny County Constables,	17 C. C. R. 622.	265
Allegheny County v. Gibson,	90 Pa. St. 397.	115
Allegheny County Home's Case,	77 Pa. St. 77.	12, 13, 14, 15, 19, 26, 42
Allegheny v. Moorehead,	80 Pa. St. 118.	15
Am. Banking & Trust Co.'s Pet.,	37 W. N. C. 297.	52
Ancona v. Becker,	3 D. R. 86.	248, 272
Arrott Street,	18 W. N. C. 121.	32
Attorney-General v. Rice,	64 Mich. 385	9
Ayars' Appeal,	122 Pa. St. 256.	33, 65, 99, 101, 103, 105, 129, 137, 145, 147, 194, 214, 216, 223, 225, 228, 229, 258
Baker v. McKee,	6 P. D. R. 599.	33, 261
Baldwin v. Philadelphia,	99 Pa. St. 164.	62, 108
Banger's Appeal,	109 Pa. St. 79.	139
Barrett's Appeal,	116 Pa. St. 486.	61, 64
Barton v. Pittsburg,	4 Brewster, 373.	5, 38
Bear v. Eshleman,	14 Lanc. L. R. 273.	236
Bearce v. Fairview,	9 C. C. R. 342. 27 W. N. C. 211.	247, 265, 282, 283
Beaumont v. Wilkes-Barre,	142 Pa. St. 198. Affg. s. c., 6 Kulp, 163.	115
Beaver County Indexes,	6 C. C. R. 525.	247
Beckert v. Allegheny,	85 Pa. St. 191.	14, 19, 26, 46
Bell v. Allegheny County,	149 Pa. St. 381. 30 W. N. C. 193.	231, 235
Bell's Gap R. R. v. Penna.,	134 U. S. 232.	124, 125
Bennett v. Hunt,	148 Pa. St. 257.	26, 27, 115, 256, 257, 273, 274
Bennett v. Maloney,	4 Kulp, 537.	21, 84
Berghaus v. Harrisburg,	122 Pa. St. 289.	33, 147

		PAGE
Berks v. Lebanon County R. R.,	5 C. C. R. 467.	278
Best v. Baumgardner,	122 Pa. St. 17.	234
Betz v. Philadelphia,	4 C. C. R. 481.	215, 216,
	21 W. N. C. 155.	256, 265
Bidwell v. Pittsburg,	85 Pa. St. 491.	15
Bing v. Weber,	81 Ill. 290.	10
Bingaman v. Pittsburg,	147 Pa. St. 353.	230
Bitting v. Commonwealth,	20 W. N. C. 178.	271, 273
Bittinger's Estate,	129 Pa. St. 338.	51
Blight's Estate,	19 C. C. R. 426.	271
	6 P. D. R. 459.	
Blood v. Mercelliott,	53 Pa. St. 391.	10, 19, 32,
		36, 37
Boston Bridge Co.'s Case,	13 C. C. R. 190.	278
Bowen v. Tioga County,	6 C. C. R. 613.	245
Bradley v. Pittsburg,	130 Pa. St. 475.	37
Brown v. Commissioners,	21 Pa. St. 42.	232
Bruce v. Pittsburg,	166 Pa. St. 152.	37, 188,
		234, 236
Bryn Mawr College v. Anderson,	10 C. C. R. 442.	248, 272
Burdick v. Burdick,	2 P. D. R. 622.	66
Butler v. Toledo,	5 Ohio, 225.	226
Cahill's Petition,	110 Pa. St. 167.	115
Cain v. Goda,	84 Ind. 209.	224
Campbell v. Commonwealth,	96 Pa. St. 344.	217, 220
Carey's Petition,	43 L. I. 384	246
	18 Phila. 668.	
Carbondale Twp's Appeal,	5 C. C. R. 339.	255
Carbondale, etc., Turnpike,	22 W. N. C. 105.	27
	4 Lanc. L. R. 361.	
	17 W. N. C. 310.	
Carother's Appeal,	118 Pa. St. 468.	19, 20
Cassel's Appeal,	8 Lanc. L. R. 260.	26
Chalfant v. Edwards,	173 Pa. St. 246.	33, 209,
	43 P. L. J. 121.	233, 236, 251,
	43 P. L. J. 237.	258, 261, 285,
		286, 287
Cheltenham Township Road,	140 Pa. St. 136.	115
	7 Montg. Co. 42.	

		PAGE
Chester City v. Black,	132 Pa. St. 568.	225, 227, 229
Chester County Court House,	7 C. C. R. 212.	248
Church Street,	54 Pa. St. 353.	19, 32, 36, 45
City Sewage Co. v. Davis,	8 Phila. 625.	37, 45
Clark v. Commonwealth,	29 Pa. St. 129.	217, 219
Clearfield Co. v. Cam. Poor Dist.,	135 Pa. St. 86.	32
Cleveland, etc., Railroad Co. v. Erie,	27 Pa. St. 380.	279
Cochran v. Library Co.,	25 Leg. Int. 20.	7
Cochran v. McKelvey,	25 P. L. J. 120	33
Cole v. Economy Township,	3 D. R. 699.	247, 264, 283
Collector's Bond,	4 Lanc. 166.	115
Columbia So. Ry. Co. v. Wright,	151 U. S. 470.	124
Colvin v. Beaver,	94 Pa. St. 388.	259
Commonwealth v. Anderson,	178 Pa. St. 171.	129, 132, 245, 271
Commonwealth v. Bender,	7 C. C. R. 620. 8 W. N. C. 73.	48
Commonwealth v. Bitting,	2 C. C. R. 298.	274
Commonwealth v. Carey,	2 C. C. R. 293.	245, 246
Commonwealth v. Clark,	3 Super. Ct. 141.	39, 104
Commonwealth v. Clovis,	1 W. N. C. 185. 9 Phila. 561.	33
Commonwealth v. Coleman,	9 C. C. R. 90.	272
Commonwealth v. Commissioners,	7 C. C. R. 173. 133 Pa. St. 180.	27, 115, 275
Commonwealth v. Conrey,	149 Pa. St. 216.	156
Commonwealth v. Curry,	18 C. C. R. 513. P. D. R. 143. 4 Super Ct. 356.	16, 18
Commonwealth v. Deibert,	2 P. D. R. 53. 12 C. C. R. 504. 2 P. D. R. 446.	37, 46
Commonwealth v. Del. Div. C. Co.,	123 Pa. St. 594.	129, 136, 137
Commonwealth v. Denworth,	145 Pa. St. 172.	160, 165
Commonwealth v. Depuy,	148 Pa. St. 201.	37
Commonwealth v. Dickinson,	9 Phila. 561. 1 W. N. C. 185. 30 Leg. Int. 53.	33

		PAGE
Commonwealth v. Dillon,	17 C. C. R. 227.	21
Commonwealth v. Doll,	6 C. C. R. 49.	37
Commonwealth v. Dolphin,	2 C. P. Rep. 85.	51
Commonwealth v. Evans,	6 Kulp, 145.	67, 68
Commonwealth v. Edgerton C. Co.,	164 Pa. St. 284.	37, 46
	Affg. 14 C. C. R. 449.	
Commonwealth v. Farley,	6 C. C. R. 433.	22, 53, 245,
	46 L. I. 108.	265
Commonwealth v. Flecker,	17 C. C. R. 671.	63
	8 Kulp, 225.	
Commonwealth v. Fowler,	18 Phila. 513.	37
Commonwealth v. Franz,	135 Pa. St. 389.	40
Commonwealth v. Frutchey,	1 P. D. R. 153.	115
	11 C. C. R. 112.	
Commonwealth v. Geesey,	1 Super. Ct. 502.	27
Commonwealth v. Gregg,	161 Pa. St. 582.	56
Commonwealth v. Green,	58 Pa. St. 226.	5, 13, 15, 19,
	7 Kulp, 151.	36, 272
	s. c., 5 Del. 342.	
Commonwealth v. Grier,	179 Pa. St. 640.	236
Commonwealth v. Grier,	9 C. C. R. 444.	28
Commonwealth v. Grier,	152 Pa. St. 176.	236
Commonwealth v. Haag,	6 C. C. R. 118.	115
Commonwealth v. Halstead,	1 C. C. R. 335.	66, 165, 271
Commonwealth v. Halstead,	s. c., 2 C. P. Rep. 247.	271
Commonwealth v. Halstead,	18 W. N. C. 385.	271
Commonwealth v. Handley,	106 Pa. St. 245.	115
Commonwealth v. Harding,	87 Pa. St. 351.	150
Commonwealth v. Hartman,	6 P. D. R. 136.	16, 18
Commonwealth v. Hartzell,	17 C. C. R. 91.	23
	5 P. D. R. 148.	
Commonwealth v. Havens,	6 C. C. R. 545.	19
Commonwealth v. Henderson,	172 Pa. St. 135.	39
	37 W. N. C. 344.	
	43 P. L. J. 207.	
Commonwealth v. Hough,	1 D. R. 51.	245, 254
Commonwealth v. Hufnal,	4 Super. Ct. 301.	18
Commonwealth v. Isenberg,	4 P. D. R. 579.	281
	4 P. D. R. 51.	

		PAGE
Commonwealth v. Jones,	4 Super. Ct. 362.	134, 281
Commonwealth v. Kelly,	5 Kulp, 533.	68
Commonwealth v. Key. Ben. Asso.,	171 Pa. St. 465. 37 W. N. C. 173.	37
Commonwealth v. Lack. Co. Comrs.,	7 C. C. R. 173. s. c., 133 Pa. St. 180.	274
Commonwealth v. Lambrecht,	3 C. C. R. 323, s. c., 44 L. I. 196.	255
Commonwealth v. Lehr,	16 C. C. R. 532.	32
Commonwealth v. Lloyd,	2 Super. Ct. 6. Affd. 178 Pa. St. 308.	7, 21
Commonwealth v. Lyter,	162 Pa. St. 50. 34 W. N. C. 393.	26, 27, 115, 251, 256, 257, 271, 273
Commonwealth v. Macferron,	152 Pa. St. 244.	100, 148, 153, 156, 186, 188, 210, 232, 236, 251, 264, 269, 271
Commonwealth v. Marshall,	69 Pa. St. 328.	226, 227
Commonwealth v. Martin,	107 Pa. St. 185.	7, 14
Commonwealth v. Mercer,	9 C. C. R. 461.	41, 51, 245
Commonwealth v. Moore,	16 C. C. R. 481. 1 Lack. L. N. 267. 4 P. D. R. 649. 2 Super. Ct. 162.	32
Commonwealth v. Moorehead,	7 C. C. R. 513.	7, 23
Commonwealth v. Morgan,	178 Pa. St. 198.	51
Commonwealth v. Morningstar,	144 Pa. St. 103.	37
Commonwealth v. Morrow,	40 P. L. J. 327.	67
Commonwealth v. Muir,	1 Super. Ct. 578. 180 Pa. St. 47.	53
Commonwealth v. McCandless,	4 C. C. R. 119.	36, 50, 115, 237
Commonwealth v. McCandless,	Affd. 21 W. N. C. 162.	50, 237, 245
Commonwealth v. McCandless,	10 Cent. R. 758	50, 237
Commonwealth v. Nihil,	4 P. D. R. 582.	37
Commonwealth v. Patton,	88 Pa. St. 258.	139, 141, 144, 147, 166, 167, 245, 249

		PAGE
Commonwealth v. Reeder,	171 Pa. St. 505.	276
Commonwealth v. Reichard,	8 C. C. R. 563.	260
	s. c., 5 Kulp, 540.	
Commonwealth v. Reynolds,	137 Pa. St. 389.	159, 165,
	s. c., 27 W. N. C. 139.	209,
	5 Kulp, 547.	216, 251,
	8 C. C. R. 568.	260
Commonwealth v. Rynkiewicz,	178 Pa. St. 213.	51
Commonwealth v. Samuels,	163 Pa. St. 282.	11, 18, 26
	14 C. C. R. 423.	
Commonwealth v. Scheckler,	1 C. C. R. 505.	274
Commonwealth v. Schneipp,	166 Pa. St. 401.	236
Commonwealth v. Sellers,	130 Pa. St. 32.	36, 115
Commonwealth v. Severn,	164 Pa. St. 462.	18, 26
	15 C. C. R. 249.	
Commonwealth v. Shoemaker,	178 Pa. St. 214.	51
Commonwealth v. Silverman,	138 Pa. St. 642.	20
Commonwealth v. Slifer,	53 Pa. St. 71.	6
Commonwealth v. Swab,	8 C. C. R. 111.	115, 274, 275
Commonwealth v. Swatara Twp.,	1 Super. Ct. 502.	27, 115, 271, 275
Commonwealth v. Swift,	17 C. C. R. 95.	38
Commonwealth v. Taylor,	159 Pa. St. 451.	14, 46, 50, 89
Commonwealth v. Toomey,	178 Pa. St. 215.	51
Commonwealth v. Van Loon,	4 Kulp, 338.	51
Commonwealth v. Weir,	18 C. C. R. 425.	37
Commonwealth v. Weir,	165 Pa. St. 284.	236
Commonwealth v. Wickert,	19 C. C. R. 251.	15, 18
	s. c., 6 P. D. R. 136.	
Commonwealth v. Wilkes-Barre & Scranton Ry.,	162 Pa. St. 614.	37
Commonwealth v. Williams,	178 Pa. St. 211.	51
Commonwealth v. Wyman,	137 Pa. St. 508.	32, 37, 148, 151, 154, 156
Commonwealth v. Zacharias,	3 Super. Ct. 364.	122
	181 Pa. St. 126.	

		PAGE
Conyngham Twp. v. Luzerne Co.,	17 C. C. R. 83. 5 P. D. R. 183.	249
Craig v. Presbyterian Church,	88 Pa. St. 42.	46
Darby & Collingdale,	19 C. C. R. 315.	47
Davey v. Ruffell,	162 Pa. St. 443.	22, 47
Davis v. Clark,	106 Pa. St. 377.	101, 109, 141, 148, 247, 249, 268
Dean v. Borchsenius,	30 Wis. 236.	226
Del Busto's Estate,	23 W. N. C. 111.	51
Devers v. York,	156 Pa. St. 359. 150 Pa. St. 208.	230
Dewalt v. Bartley,	146 Pa. St. 529.	276
Dewalt v. Commissioners,	1 P. D. R. 199.	276
Dewhurst v. Allegheny,	95 Pa. St. 437.	14, 15, 73
Dibrell v. Morris' Heirs, S. C. Tenn.,	15 S. W. Rep. 87.	125
Doberneck's License,	35 P. L. J. 476. 45 Leg. Int. 256. 5 C. C. R. 454.	37
Donley v. Pittsburg,	147 Pa. St. 348.	20, 226, 230
Donohugh v. Roberts,	11 W. N. C. 186.	72, 74
Dorrance v. Dorranceton,	181 Pa. St. 164.	32
Dorsey's Appeal,	72 Pa. St. 192.	5, 14, 15, 17, 18, 19, 26, 30, 32
Doud v. Insurance Co.,	6 C. C. R. 329.	74
Dunn v. Mellon,	147 Pa. St. 11.	216, 223
Durkin v. Kingston Coal Co.,	171 Pa. St. 193.	134, 281
Durr v. Commonwealth,	3 C. C. R. 525.	68, 237
East Grant Street,	121 Pa. St. 596.	63, 67, 84
Eby's Appeal,	70 Pa. St. 311.	7, 37
Engle v. Reichard,	4 C. C. R. 48. s. c., 4 Kulp, 361.	258
Erie City v. Reed,	113 Pa. St. 468.	226
Erie Co. v. Erie City Comrs.,	113 Pa. St. 368.	22
Esling's Appeal,	89 Pa. St. 205.	19
Evan's Appeal,	152 Pa. St. 401.	47, 50, 67
Evans v. Phillipi,	117 Pa. St. 226.	114, 115, 129, 256, 257, 271, 272, 273, 274
Evans v. Willistown Twp.,	168 Pa. St. 578.	14, 37

		PAGE
Evans v. Witmer,	2 C. C. R. 612. 4 Lanc. L. R. 105.	115, 274, 275
Fisher v. Harrisburg,	2 Gr. 291.	194
Foster v. Strayer,	19 C. C. R. 417. s. c., 13 Lanc. L. R. 285. s. c., 6. P. D. R. 333.	282
Fox's Appeal,	112 Pa. St. 353.	138
Frampton's Estate,	18 C. C. R. 462.	18
Fraser v. McConway,	6 P. D. R. 555.	129
Frederick v. Penna. Canal Co.,	109 Pa. St. 50.	32
Frost v. Cherry,	122 Pa. St. 417. Affg. 4 C. C. R. 579.	166, 171, 214, 216, 245
Fryer v. Metz,	12 Montg. 108.	18
Gackenbach v. Lehigh County,	166 Pa. St. 448.	27
Gardner v. Chester,	2 D. R. 162.	265
Gardner v. Gibson,	21 W. N. C. 121.	84
Gaston v. Graham,	18 C. C. R. 265.	33, 215, 216, 261
Gaston v. Meadville,	5 P. D. R. 549.	33
Germania Ins. Co. v. Commonwealth,	85 Pa. St. 513.	135, 138
Gettysburg Battlefield Association,	2 P. D. R. 649.	38
Gibbons v. Scranton Poor District,	3 Lack. Jur. 241.	236
Giozza v. Tiernan,	148 U. S. 657.	124
Grant Street,	121 Pa. St. 596.	33, 63, 67, 84, 147
Gray v. Pittsburg,	147 Pa. St. 354.	230
Greensburg v. Laird,	8 C. C. R. 608.	256
Gregg Twp. v. Jamison,	55 Pa. St. 468.	221
Grim v. School District,	57 Pa. St. 433.	226
Grubb's Appeal,	174 Pa. St. 187.	37
Guildin v. Schuylkill Co.,	149 Pa. St. 210. Reversing s. c., 10 C. C. R. 601.	148, 156
Gulf, etc., Railway v. Ellis,	165 U. S. 150.	122, 123
Haines v. Pass. Ry. Co.,	152 Pa. St. 153.	183, 188, 211, 251, 278
Halderman's Appeal,	104 Pa. St. 251.	7

		PAGE
Hancock Street,	1 W. N. C. 112.	41
Hand v. Fellows,	30 W. N. C. 72.	235
Hannick's Bond,	3 C. C. R. 254.	115, 274, 275
Hanover Borough's Appeal,	150 Pa. St. 202.	236
Harris' Appeal,	160 Pa. St. 494.	27, 37, 162, 165, 186, 188, 211, 251, 256
Harrisburg v. McCormick,	129 Pa. St. 213.	195, 227
Hatfield v. Commonwealth,	120 Pa. St. 395.	40
Hawes Mfg. Co.'s Appeal,	1 Monaghan, 353.	53
Hays v. Commonwealth,	82 Pa. St. 518.	115
Hayes v. Missouri,	120 U. S. 68.	124
Henrix's Account,	146 Pa. St. 285.	232
Henry Street,	123 Pa. St. 346.	152, 165
Hepburn v. Curts,	7 W. 300.	224
Hewitt's Appeal,	88 Pa. St. 55.	226, 227
Hippsly v. Tucke,	2 Lev. 184.	221
Hoffa's Appeal,	1 Super. Ct. 357.	46, 53, 281
Hoffman v. Matthes,	3 Del. Co. 579.	223
Hoopes v. Scranton,	1 Wilcox, 189.	165
Hoover v. Penna. R. R. Co.,	156 Pa. St. 220.	281
Hortsman v. Kaufman,	97 Pa. St. 147.	45
Howard's Appeal,	162 Pa. St. 374.	234
Huidekoper v. City of Meadville,	83 Pa. St. 156.	226
Hunter's Appeal,	18 W. N. C. 411.	138
Hutchinson's Appeal,	4 Pennypacker, 84.	234
Indiana Co. v. Agricultural Society,	85 Pa. St. 357.	115
Irwin v. McCallin,	28 P. L. J. 322.	237
Jenks v. Sheffield,	135 Pa. St. 400.	241, 244,
	s. c., 26 W. N. C. 275.	245
Jermyn v. Scranton,	3 Lack. L. N. 112.	202
Johnson v. Beacham,	2 C. C. R. 108.	110
Kaufman v. Jacobs,	4 C. C. R. 462.	74
Keim v. Devitt,	3 C. C. R. 250.	115, 274
Kelly v. City of Pittsburg,	85 Pa. St. 170.	137, 226
Kelly v. Mayberry,	154 Pa. St. 440.	37
Kennedy v. Agricultural Ins. Co.,	165 Pa. St. 179.	129, 135
Kenner v. Kelly,	19 C. C. R. 348.	18
Keyser v. McKissan,	2 Rawle, 139.	220

		PAGE
Kilgore v. Magee,	85 Pa. St. 401.	129, 194, 215, 216
Kimball v. Rosendale,	42 Wis. 407.	224
King v. Lisle,	Andrews' Rep. 163.	221
King v. Philadelphia Co.,	154 Pa. St. 160.	218, 223
King v. Williams,	1 W. Bl. 93.	7
Kingsbury v. Ledyard,	2 W. & S. 41.	221
Kittanning Coal Co. v. Com.,	79 Pa. St. 100.	129, 130, 137
Kitty Roup's Case,	81* Pa. St. 211.	129, 130, 137, 138, 271
Klingler v. Bickel,	117 Pa. St. 326.	62, 107 108
Klugh v. Harrisburg,	122 Pa. St. 289.	33, 147
Krause v. Penna. R. R. Co.,	4 C. C. R. 60.	74
Lacey's Estate,	19 C. C. R. 431. 6 P. D. R. 499.	271
Lackawanna Twp.,	160 Pa. St. 494.	27, 37, 162, 165, 186, 188, 211, 251
Lackawanna Co. v. Stevens,	105 Pa. St. 465.	236
Lake Shore & Mich. So. Ry. Co.'s Appeal,	1 C. C. R. 327. s. c., 16 P. L. J. 161.	246
Land v. Wack,	5 P. D. R. 606.	18
Land Co. v. Weidner,	169 Pa. St. 359.	116, 283, 284
Lansdale Borough,	1 Montg. 192.	65, 66
La Plume Bor. v. Gardner,	148 Pa. St. 192. Affg. 2 Lack. Jur. 28.	26
Larrison v. Peoria, etc., R. R. Co.,	77 Ill. 17.	10
Lea v. Bumm,	3 W. N. C. 335.	15, 36
Lehigh Iron Co. v. Lower Macungie Township,	81 Pa. St. 482.	111, 115
Lehigh Valley Coal Co.'s Appeal,	164 Pa. St. 44.	171, 249, 257, 271
Lehigh Valley Coal Co.'s Case,	39 Leg. Int. 210.	8
Lehigh Valley Coal Co.'s Petition,	14 C. C. R. 621. 3 P. D. R. 610.	171
Leitzel v. Center Co.,	14 Lanc. L. R. 191.	236

		PAGE
Linn v. Chambersburg Borough,	160 Pa. St. 511.	211
Little Equinunk, etc., Turnpike Co.,	2 C. C. R. 632.	27
Loewi v. Haedich,	8 W. N. C. 70.	45
Loftus v. Farmers' & Mechanics' Bank,	133 Pa. St. 97.	63, 64, 67,
	s. c., 25 W. N. C. 459.	117
	Affg. 46 L. I. 46.	
Loughlin's Appeal,	19 W. N. C. 517.	138
Lucas v. Ruff,	45 L. I. 454.	39
Luzerne Co. v. Glennon,	109 Pa. St. 564.	148, 156
Luzerne Co. v. Griffith,	1 Kulp, 297.	150, 156
Luzerne Water Co. v. Toby Creek Water Co.,	148 Pa. St. 568.	46
	Affg. 6 Kulp, 237.	
Lyon v. State Line & Juniata R. R. Company,	77 Pa. St. 429.	45
	1 W. N. C. 225.	
Magee v. Commonwealth,	46 Pa. St. 358.	226
Malloy v. Reinard,	115 Pa. St. 25.	231
Marchant v. Penna. R. R. Co.,	153 U. S. 380.	124
Mauch Chunk v. Betzler,	19 C. C. R. 27.	38
	s. c., 6 P D. R. 330.	
	s. c., 10 York, 151.	
Mauch Chunk v. McGee,	81 Pa. St. 433.	19, 36
	33 Leg. Int. 272.	
	3 W. N. C. 33.	
Meadville v. Dickson,	129 Pa. St. 1.	33, 165, 215,
		216, 226, 229
Melick v. Williamsport,	162 Pa. St. 408.	230
Meredith v. Lebanon,	1 D. R. 220.	276
Michener v. Philadelphia,	118 Pa. St. 535.	195
Miller v. Cunningham,	7 C. C. R. 500.	248, 272
Mills v. Charleton,	29 Wis. 400.	226
Millvale Borough,	43 P L. J. 411.	251
	26 P. L. J. 211.	
Millvale v. Evergreen Ry. Co.,	131 Pa. St. 1.	18, 46
Mink v. Mink,	16 C. C. R. 189.	38
Missouri Pacific Ry. v. Humes,	115 U. S. 512.	126
Moers v. Reading,	21 Pa. St. 188.	278

		PAGE
Monroe v. Luzerne Co.,	103 Pa. St. 278.	148, 149, 156
Montgomery v. Commonwealth,	91 Pa. St. 125.	101, 104, 105,
	37 L. I. 94.	257, 270
Morrison v. Bachert,	112 Pa. St. 322.	102, 103,
	1 C. C. R. 153.	105, 129, 133, 141, 148, 166, 245, 249
Mount Joy v. Lancaster Tpk.,	13 Lanc. L. R. 180	47
	Reversed 182 Pa. St. 581.	
Myers v. Commonwealth,	110 Pa. St. 217.	36
McAskie's Appeal,	154 Pa. St. 24.	186, 188, 251
McCall v. Coates,	23 Atl. Rep. 1126.	235
McCarty v. Commonwealth,	110 Pa. St. 243.	129, 131, 136, 137, 141, 148, 245, 249
McCleary v. Allegheny Co.,	163 Pa. St. 578.	236
McCormick v. Fayette Co.,	150 Pa. St. 190.	62, 108
McGee's Appeal,	114 Pa. St. 470.	15
McGunnegle v. Allegheny Co.,	163 Pa. St. 589.	236
McKay v. Trainor,	152 Pa. St. 242.	188, 209, 210, 232, 236, 251, 253, 264, 269
McKeesport v. Owens,	6 W. N. C. 492.	36, 46
McKeever v. Victor Oil Company,	9 C. C. R. 284.	22, 74
Nason v. Poor Directors,	126 Pa. St. 445.	18
	s. c., 22 W. N. C. 60.	
Norristown v. Citizens' Pass. Ry. Company,	9 C. C. R. 102.	61, 108
Norristown v. Citizens' Pass. Ry. Company,	148 Pa. St. 87.	61, 108
Nutt's Avenue,	2 Chester Co. 49.	29, 51
Oakley v. Oakley,	1 P. D. R. 781.	66
	11 C. C. R. 572.	
Otto Township Road,	2 Super. Ct. 20.	52
	181 Pa. St. 390.	
	38 W. N. C. 328.	
Oxford Borough Street,	2 D. R. 327.	26
Packer v. Railroad Company,	19 Pa. St. 211.	73
Pacific Exp. Co. v. Seibert,	142 U. S. 339.	124

		PAGE
Parkinson v. State,	14 Md. 185.	10, 37
Payne v. School District,	168 Pa. St. 386.	27
Penna. R. R. Co.'s Appeal,	3 C. C. R. 162.	246
Penna. R. R. v. Montgomery Co. Pass. R. R.,	3 P. D. R. 58.	38
Penna. R. R. v. Riblet,	66 Pa. St. 164.	7, 31, 32
People v. Brooklyn,	71 N. Y. 495.	226
People v. Collins,	7 Johns Rep. 554.	221
People v. Mahaney,	13 Mich. 197.	61
Pepper v. Philadelphia,	6 P. D. R. 317.	98
Perkins v. Philadelphia,	156 Pa. St. 554. 6, 22, 50, 74, 156 Pa. St. 539. 147, 279, 284, 286, 287	
Perot's Appeal,	86 Pa. St. 335.	115
Philadelphia v. Donahew,	5 Leg. Gaz. 22. 1 Leg. Chron. 45.	29
Phila. v. Haddington M. E. Ch.,	115 Pa. St. 291. 172, 187, 194, 209, 251, 255, 264, 268, 269	
Philadelphia v. Kates,	150 Pa. St. 30. 196, 198, 251, 264, 269, 271	
Philadelphia v. Pepper,	2 C. C. R. 287. 47, 255, 269	
Philadelphia v. Pepper,	181 Pa. St. 566. s. c., 6 P. D. R. 317.	98
Phila. v. Ridge Ave. Pass. Ry. Co.,	142 Pa. St. 484. 19, 20, 26, 6 C. C. R. 283. 46, 50	
Philadelphia v. Spring Garden Co.,	161 Pa. St. 522. 14, 26, 47, 51	
Phila. v. Westminster Cem. Co.,	162 Pa. St. 105. 144, 147, 34 W. N. C. 17. 245, 279 3 D. R. 151.	
Philadelphia v. Wright,	100 Pa. St. 235.	115
Phila. v. Reading Coal Co.'s Pet.,	164 Pa. St. 248. 171, 257, 271	
Phillip's Estate,	6 C. C. R. 499.	84
Phœnixville Road,	109 Pa. St. 44. 5, 11, 19, 26, 30, 32	
Pierce v. Commonwealth,	104 Pa. St. 150.	115
Pierie v. Philadelphia,	139 Pa. St. 573. 27 W. N. C. 285. Affg. 47 L. I. 154.	27

		PAGE
Pittsburg's Assessors,	7 Leg. Gaz. 117.	254, 266
Pittsburg's Petition,	138 Pa. St. 401.	70, 74, 118, 151, 156, 180, 188, 192, 209, 215, 216, 251, 262, 264, 266, 268
Pittsburg v. Hughes,	13 C. C. R. 535.	215, 216, 253
Poor Dist. v. Clearfield Co.,	16 C. C. R. 554. 4 P. D. R. 584.	28
Poor Dist. v. Luzerne Co.,	17 C. C. R. 83. 5 P. D. R. 183.	28
Portuondo's Estate,	19 C. C. R. 419.	18, 271
Portuondo's Estate,	6 P. D. R. 462.	271
Potter's Field,	8 York, 145.	147, 279
Pottstown Borough,	117 Pa. St. 538. 1 Montg. 161. 1 Montg. 189.	43, 46, 65, 66, 256
Pottstown Borough Ext.,	4 Montg. 29. Affg. s. c., 1 Montg. 189.	256
Price v. Blair Co.,	14 Lanc. L. R. 134.	236
Provident Asso. v. Flanagan,	19 C. C. R. 529.	18
Purvis v. Ross,	12 C. C. R. 193. 158 Pa. St. 20.	46, 61, 90
Quinn's Appeal,	162 Pa. St. 56.	234
Quinn v. Cumberland Co.,	162 Pa. St. 55. Reversing 13 C. C. R. 602.	26, 236
Railway Co. v. Mackey,	127 U. S. 205.	124
Reading's Constables,	8 C. C. R. 101.	255, 266
Reading v. Savage,	120 Pa. St. 198. 124 Pa. St. 328. 23 W. N. C. 332. 5 Lanc. L. R. 135.	157, 165, 194, 223, 229
Reid v. Smoulter,	128 Pa. St. 324. Reversing 5 Kulp, 145.	129
Reeves v. Edsall,	1 Lanc. J. 96.	74
Reeves v. Phila. Trac. Co.,	152 Pa. St. 153.	183, 188, 211, 251, 278
Reynolds Lumber Co. v. Reynolds,	4 P. D. R. 573. 12 Lanc. L. R. 383. 6 Del. Co. 255.	74

		PAGE
Riddle v. County of Bedford,	7 S. & R. 386.	221
Ridge Ave. Pass. Ry. Co. v. Phila.,	124 Pa. St. 219.	20, 26, 46, 50
	23 W. N. C. 324.	
Ripple v. Commissioners,	1 P. D. R. 201.	276
	142 Pa. St. 484.	
Rogers v. Glendower Iron Works,	17 W. N. C. 444.	47, 50, 89
Rogers v. Mfg. Improvement Co.,	109 Pa. St. 109.	20, 26
Roth v. Hobson,	5 C. C. R. 17.	84
	21 W. N. C. 64.	
Royersford Street,	2 Montg. Co. 153.	28
Ruan Street,	132 Pa. St. 257.	170, 187,
	24 W. N. C. 460.	188, 190,
	25 W. N. C. 349.	191, 194,
		209, 210, 214, 236,
		251, 262, 264
Rubright v. Pittsburg,	147 Pa. St. 355.	230
Ruth's Appeal,	8 Lanc. L. R. 264.	26, 46, 50
	1 Lack. L. R. 311.	
	10 W. N. C. 498.	
Rutt v. Burkey,	14 Lanc. L. R. 11.	18
Rymer v. Luzerne Co.,	142 Pa. St. 108.	129, 132,
		148, 156, 235
Safe Deposit Co. v. Fricke,	152 Pa. St. 231.	188, 197,
		199, 201, 209, 210, 215,
		216, 236, 251, 254, 264, 269
Sanders v. Cambria County,	16 C. C. R. 94.	48
	4 P. D. R. 241.	
Sanderson v. Commissioners,	1 C. C. R. 342.	27, 53, 66, 67
Satterlee v. Matthewson,	16 S. & R. 169.	227
Sayre Borough v. Phillips,	148 Pa. St. 488.	123
Schall v. Norristown,	3 Luz. L. R. 77.	38
Schenley v. Commonwealth,	36 Pa. St. 29.	224, 226, 227
Scowden's Appeal,	96 Pa. St. 422.	141, 146, 147,
		166, 245, 249
Scranton School Dist.'s Appeal,	113 Pa. St. 176.	103, 105,
	s. c., 1 Atl. 560.	156, 157,
		159, 162, 165, 167, 258, 271
Scranton v. Silkman,	113 Pa. St. 191.	105, 110,
		117, 148, 199, 245, 246,
		249, 264, 270

		PAGE
Scranton v. Whyte,	148 Pa. St. 419.	177, 181, 188, 199, 201, 202, 209, 216, 251, 262, 264, 269, 271
Second Nat. Bank v. Caldwell,	39 Leg. Int. 414. 13 Fed. Rep. 429.	38, 63
Seifried v. Commonwealth,	101 Pa. St. 200.	231
Seitz v. Lafayette Traction Co.,	5 C. C. R. 469.	278
Sener v. Ephrata,	176 Pa. St. 80.	47
Sewer Street,	8 C. C. R. 226.	115
Sewickley Bor. v. Sholes,	118 Pa. St. 165.	19, 22, 52
Sewickley Sch. Dist. v. Osborn Sch. District,	19 C. C. R. 257. s. c., 6 P. D. R. 211.	282
Shaaber v. Reading,	133 Pa. St. 643.	190, 194, 210
Sharett's Road,	8 Pa. St. 92.	193
Shoemaker v. Harrisburg,	122 Pa. St. 285. 4 C. C. R. 86.	33, 65, 147
Shurley v. Railroad Co.,	121 Pa. St. 511.	118
Simon's Case,	4 D. R. 189.	215, 216
Sixteenth Street,	4 C. C. R. 124.	165
Smith v. Baker,	3 P. D. R. 626.	37
Smith v. Meadow Brook Brew. Co.,	3 Lack. Jur. 154.	196, 203, 254
Smith v. Reading City Pass. Ry. Co.,	156 Pa. St. 5. Affg. 13 C. C. R. 49. 2 P. D. R. 490.	25, 27
Smyers v. Beam,	158 Pa. St. 57.	46, 90
Snyder v. Mogart,	17 C. C. R. 1.	18
South Bethlehem v. Hemingway,	16 C. C. R. 103.	28, 51
Spring Street,	112 Pa. St. 258.	191, 194
St. L. & San Fran. Ry. v. Mathews,	165 U. S. 1.	124
State Street,	2 Leg. Chron. 1.	21, 29, 42
State v. Loomis,	115 Missouri, 307.	124
State v. Newark,	34 N. J. L. 236.	226
State Line & Juniata R. R. Co.'s Appeal,	77 Pa. St. 420. 1 W. N. C. 225.	12, 13, 19, 45
Strange v. Dubuque,	62 Iowa, 303.	224

		PAGE
Straub v. Pittsburg,	38 P. L. J. 89. Affd. 138 Pa. St. 356.	180, 188, 211, 244, 245, 255
Strine v. Foltz,	113 Pa. St. 349. 1 C. C. R. 490.	264, 281
Strohl v. Ephrata,	13 Lanc. L. R. 1.	40
Stuart's Appeal,	163 Pa. St. 210.	61, 68, 89
Swaney v. Wash. Oil Co.,	7 C. C. R. 351.	22, 74
Swatara School Dist.'s Appeal,	1 Super. Ct. 502.	115, 271, 275
Taggart v. Commonwealth,	102 Pa. St. 354.	32, 36
Taxpayer's Petition,	26 P. L. J. 146.	172
Taylor v. Bowling,	5 P. D. R. 605.	18
Telephone Co. v. Keesey,	5 P. D. R. 366.	39
Titus v. Elyria Oil Co.,	1 P. D. R. 204.	22, 74
Titusville Iron W. v. Key. Oil Co.,	122 Pa. St. 627.	39, 61, 72, 83, 84
Townsend v. Wilson,	7 C. C. R. 101.	248, 272
Union Pass. Ry. Co.'s Appeal,	81* Pa. St. 91. 4 Leg. Gaz. 381. 29 Leg. Int. 380. 9 Phila. 495.	13, 18, 47, 51
Van Loon v. Engle,	171 Pa. St. 157.	188, 248, 251, 261, 269, 271, 272
Van Storch v. Scranton,	3 C. C. R. 567.	165
Van Storch v. Scranton Sch. Dist.,	3 C. C. R. 571. 4 C. P. 99.	165
Vanzandt v. Waddell,	2 Yerger, 260.	125
Von Bonnhorst v. Allegheny Co.,	163 Pa. St. 588.	236
Walston v. Nevin,	128 U. S. 232.	124
Washington Avenue,	69 Pa. St. 352.	138
Washington Bor. v. McGeorge,	146 Pa. St. 248.	15, 37, 74
Watkin v. West Phila. Ry. Co.,	152 Pa. St. 153. 11 C. C. R. 648. 1 D. R. 463.	188, 183, 188, 211, 251, 278
Weinman v. Pass. Ry. Co.,	118 Pa. St. 192.	100, 118, 144, 173, 175, 185, 187, 209, 251, 278

		PAGE
Wetzel v. Goodyear,	5 P. D. R. 605.	18
Wheeler v. Philadelphia,	77 Pa. St. 338.	33, 98, 107, 129, 156, 170, 178, 194, 199, 249
Wheeler v. Rice,	83 Pa. St. 232.	36
Whitney v. Pittsburg,	147 Pa. St. 351.	230
Williams v. People,	24 N. Y. 405.	117
Wilkes-Barre v. Myers,	113 Pa. St. 395.	110, 264
Wilson v. Downing,	4 Super. Ct. 487.	39, 63
Wishart v. Leslie,	36 P L. J. 223.	68
Wissler v. Becker,	2 C. C. R. 103.	110
Wolf v. Philadelphia,	105 Pa. St. 25.	195
Wright v. Barber (S. C.),	5 W. N. C. 444.	276
Wynkoop v. Cooch,	89 Pa. St. 450.	15
Wyoming Street, Pittsburg,	137 Pa. St. 494. s. c., 27 W. N. C. 136.	101, 177, 180, 184, 187, 194, 209, 215, 216, 251, 262, 264, 268
Yeager v. Weaver,	64 Pa. St. 425.	7, 36
Yick Wo. v. Hopkins,	118 U. S. 356.	128
York School Dist's Appeal,	169 Pa. St. 70.	147, 279
York Telephone Co. v. Keesey,	9 York, 153. s. c., 5 P. D. R. 366.	39
Young v. Bradford County,	7 C. C. R. 428.	248

INDEX.

PAGE

ACKNOWLEDGMENTS.
see RES INTER ALIOS PRINCIPLE.

ACTS OF ASSEMBLY.
see ORIGINAL ACTS AND GENERAL SUPPLEMENTS AND AMENDMENTS.
see ORIGINAL ACTS AND SPECIFIC SUPPLEMENTS AND AMENDMENTS.
see CURATIVE STATUTES.
challenged pursuant to constitutional provisions herein treated and sustained or held invalid in whole or in part:—
see TABLE OF ACTS WITH CITATIONS.

ACTS OF ASSEMBLY VOID IN PART.
only that portion of Act fails which is not covered by the title 15
general rule 214
manner in which questions arise 215
rule of essential parts 215
rule of single object 215
rule as to two or more objects 215
time and use 216

ADOPTION.
see GERMANE.

AFFAIRS.
see CONSTRUCTION.

ALIEN TAX LAW.
invalid 129

AMBIGUITY.
in title not permissible. 16
see CLEARNESS OF TITLE.

PAGE

AMENDMENTS.

see ORIGINAL ACTS AND GENERAL SUPPLEMENTS AND AMENDMENTS.
see ORIGINAL ACTS AND SPECIFIC SUPPLEMENTS AND AMENDMENTS.
express amendments intended by Article III, Section 6 61
by addition must recite former statute 64
overlooking intervening amendments 84

ANNEXATION.

see RES INTER ALIOS PRINCIPLE.
see GERMANE.
see BOROUGHS.
see CITIES.
see MUNICIPAL AFFAIRS.

ANTHRACITE COAL MINES.

see CLASSIFICATION.
see LABOR, TRADE, MINING, AND MANUFACTURING.

APPEALS.

see SUBJECT.
see GERMANE.
see TAXATION.
see COUNTIES.

APPROPRIATION BILL.

constitutional provisions relating to 1
may incidentally create an office 53

ARBITRARY.

see CLASSIFICATION.

ARGUMENT.

of provisions herein treated differs from that of general constitutional questions 5

PAGE

ASSESSMENTS.
see SUBJECT.
see GERMANE.
see CURATIVE ACTS.
see TAXATION.

ASSESSORS.
see JUDICIAL MATTERS.
see CITIES.

AUDITORS.
see RES INTER ALIOS PRINCIPLE.

BILL OF RIGHTS.
see CLASSIFICATION.

BITUMINOUS COAL MINES.
see LABOR, TRADE, MINING, AND MANUFACTURING.

BOROUGHS.
see RES INTER ALIOS PRINCIPLE.
see GERMANE.
annexation of territory proper 256
regulation of collection of taxes in boroughs proper 256
authorizing improvements of streets in boroughs valid 256
authorizing assessment for benefits in such cases valid 256

BOROUGH LEGISLATION.
not within provisions as to local and special legislation 107
these provisions apply only to the General Assembly 107

BOROUGH ORDINANCES.
whether within Article III, Section 6 61

BORROWING.
see GERMANE.

PAGE

BRIDGES.

see GERMANE.
see PRIVATE CORPORATIONS.

CASES WITHIN GENERAL LAW OR JUDICIAL JURISDICTION.

exclusion of retroactive effect valid 283
cumulative remedy valid 284

CEMETERIES.

cases as to 142, 279
see CLASSIFICATION.

CENSUS.

only test of population 149

CITIES.

transition of cities from class to class 151-2-3-4-5
prescribing effect of *scire facias* in certain class of cities invalid 249
or for incorporation of street railways 249
or providing special judicial procedure for assessment of damages 248
or regulating school affairs 250
laying out of highways a municipal subject 250
and deciding when their opening shall take place 250
and institution of proceedings therefor 250
and grading, paving, sewering, and lighting 250
judicial proceedings not within the principle of classification 250
taxation a municipal power 250
provision for liens for assessment proper 250
unusual provisions of doubtful validity 250
validity of perpetual lien of taxes doubtful 250
regulation of street railway motive power proper 250
provision for annexation of territory proper 250
provision as to tax liens excepting certain classes of cities invalid 251

PAGE

CITIES—Continued.
provision that taxes shall be liens without regard to whether the true owner is named invalid 251
provision that judicial sale of real estate shall vest title whether owner named or not invalid 251-3-4
perpetual lien enforced on distribution 254
priority of lien enforced on distribution 254
regulation of milk traffic doubtful 254
requiring a certain court to appoint assessors invalid 254
regulation of plumbers valid 255
annexation of territory valid 255
election of constables in cities of certain classes valid 255
poor affairs in cities of certain classes valid 255
prescribing effect of judgment in city of certain class invalid 255
see RES INTER ALIOS PRINCIPLE.
see GERMANE.
see TRANSITION.
see MUNICIPAL AFFAIRS.
see OPTION.
see JUDICIAL MATTERS.
see LIENS.
see HIGHWAYS.
see SCHOOL DISTRICTS.
see PRIVATE CORPORATIONS.
see TAXATION.

CLASSIFICATION.
the test of generality 98
necessary in some cases 106
c. g., cities 106
when not admissible 110
classification generally 121
principle of not capable of definition 121

PAGE

CLASSIFICATION—Continued.

the test of special legislation 121
arbitrary 122
e. g., widows of druggists 122
e. g., railroad companies as to certain liabilities 123
equality before the law 123
equal protection of the laws 123
must be reasonable 124
must not be invidious 125
hostile 125
unusual 125
must have adequate basis 126
within the principle of Article I, Section 1, Bill of Rights 128
alien tax law, instance of improper classification 129
legislative power of classification not abridged by Constitution 129, 130
Constitution has made certain classes 129
recognizes power to classify 129
laws based on constitutional classification are general 129
power to classify not abridged 129, 130
e. g., cities 130
e. g., subjects of classification 130
instances of constitutional classification 131
legislature cannot modify 131
sub-classification of constitutional classes 132
classification of coal mines 134
of foreign insurance companies 135
proper classification a judicial question 135
grounds of classification 136
custom 136
nature 136
laws of trade 136
necessity 136
presumption favors legislative classification 137
infringement of Constitution the test 137
the subject further illustrated 137

PAGE

CLASSIFICATION—Continued.
population the only basis as to cities or counties 139
classification of political sub-divisions must be complete 140
classification must not be false, pretended, evasive nor excessive 141
instance of false classification—courts 141
instance of evasive classification—courts 142
instance of pretended classification—cemeteries 142
instance of pretended classification with individualizing definition—cemeteries 143
instance of false classification—public buildings 144
instance of excessive classification—cities 144
distinction between general and particular classification 145
three classes of cities final 146
multiplication of classes of cities leads to special legislation 146
classification must be operative from time to time so as to permit transition 147
instance of violation of this rule—counties 148
transition from class to class 148, 155
see SUBJECT.
see GERMANE.

CLEARNESS OF TITLE.
required. 11
what is clearness 16
not ambiguity 16
not uncertainty 17
nor words used in misleading sense 17
see AMBIGUITY.

COAL MINES.
see CLASSIFICATION.
see LABOR, TRADE, MINING, AND MANUFACTURING.

CONSTABLES.
see CITIES.

PAGE

CONSTITUTION.

does not abridge power of classification 129
save when it makes certain classes 129, 131

CONSTITUTIONAL PROVISIONS.

relating to titles of Acts of Assembly 1
relating to general appropriation bill 1
reforms intended by those herein treated 6
relating to enactments by reference 57
relating to local and special legislation 91
relating to local affairs of political divisions of the State 240
relating to highways 261
relating to judicial matters 263
relating to liens 267
relating to taxation 269
relating to elections 275
relating to private corporations 276
relating to cemeteries, etc. 279
relating to labor, trade, mining and manufacturing 279
relating to special privileges and immunities 281
relating to partial repeal of general law 283
relating to cases within general law or judicial jurisdiction 283
relating to notice 284
summary of provisions not infringed 239
affirmative and negative 95
general and specific 96
provisions in the singular 97, 98
provisions for special legislation 97, 98
provisions operate prospectively 111
not retroactively 111
provisions classified 204
as relating directly to municipal affairs 204
as having no relation to municipal affairs 205
as relating to municipal affairs or not according to circumstances 206

PAGE

CONSTITUTIONAL PROVISIONS—Continued.
classified as relating to political, executive, or administrative matters 97
as relating to legislative matters 97
as relating to judicial matters 97
primary prohibitions of special legislation 121
these relate to things formerly permitted 121
secondary prohibitions of special legislation 121
they can only be applied cumulatively 121
because they depend on whether the rule of classification has been violated 121

CONSTRUCTION.
of provisions relating to titles 12
legislative usage recognized 12
construction generally 13
quotation marks in title 13
of provisions as to local and special legislation 101
construction as remedial 101, 239
historical occasion of their adoption 101, 102
intent to substitute general for local and special legislation 102, 103
construction prevents indirect as well as direct violation 103
prevents incidental as well as direct violation 239
"affairs" construed broadly 103
construction generally 106
construction must be uniform 110
provisions construed as prospective 111

CONTROLLERS.
see RES INTER ALIOS PRINCIPLE.
see SUBJECT.
see GERMANE.

CORPORATIONS.
see RES INTER ALIOS PRINCIPLE.
see GERMANE.
see PRIVATE CORPORATIONS.
see CITIES.

PAGE

COUNTIES.
county affairs 103-4-5
can only be classified by population 139
constitutional classification final for some purposes 131
law excluding certain counties invalid 148
transition of counties from class to class, 148, 149, 150, 151
option invalid 165 to 172
local provision for courts invalid 241
officers' salaries 241
authorizing appeals 241
regulating fences 241
taxing fees of officers valid 241
doubt as to whether poor districts are included within the provisions 241
police power 245
salaries 245
appeals 246
prisoners 246
indexes in courts 247
actions by veterans against counties, etc. 247
lien of taxes excepting certain classes of cities invalid 248
provision for county buildings excepting a county invalid 248
furnishing offices at county seat valid 248
relief of poor where not cared for at county expense invalid 249
see RES INTER ALIOS PRINCIPLE.
see SUBJECT.
see GERMANE.
see TRANSITION.
see OPTION.
see JUDICIAL MATTERS.
see CLASSIFICATION.

COUNTY AUDITORS OR CONTROLLERS.
title relating to 17

PAGE

COUNTY TREASURER.
see RES INTER ALIOS PRINCIPLE.

COURTS.
see GERMANE.
see CLASSIFICATION.
see JUDICIAL MATTERS.

CURATIVE STATUTES.
legislature may ratify what it may authorize 223
legislature may not ratify what it could not authorize 224
may ratify assessments for local improvements 224
or paving 225
taxation 226
ordinances of *de facto* city 247
legalized *de facto* officers 229
relating to judicial sales 267

CUSTOM.
see CLASSIFICATION.

DEBT, INCREASE OF
see GERMANE.
see QUESTIONS OF REPEAL.

DE FACTO.
de facto officers 217, 220, 221, 229
de facto streets and highways 219
effect of regular proceedings under color of statute 222
de facto city 223-227
borough becoming a city within invalid classification act remains a city of the third class 223

DEPUTY CORONERS.
see RES INTER ALIOS PRINCIPLE.

DIVISION.
of county or township does not affect special law 236, 237

PAGE

ELECTIONS.
contested elections 266
special election law prior to Constitution in effect after its adoption 276
Baker Ballot Law valid 276
Superior Court Act valid 276
see GERMANE.

EMINENT DOMAIN.
general title to incorporate may probably carry power of 20
see CITIES.
see MUNICIPAL AFFAIRS.
see JUDICIAL MATTERS.

ENABLING AND DISABLING CLAUSE.
see GERMANE.

ENACTMENT AND REPEAL.
see TWO SUBJECTS.

ENACTMENT BY REFERENCE.
constitutional provisions as to 57
express amendments the object of 61
mischief to be remedied, want of notice and surprise 61
enactment must be self sustaining 61
whether borough ordinances are governed by the provision 61
provision is mandatory 62
former statute need not be recited at length 62, 63
expository statute violates the provision 62, 82
amendments by addition must recite provision amended 64
independent enactments not within the provision 64
supplements not usually within the provision 65
supplements by way of extension are 66
implied repeals not within the provision 67
nor are express repeals by title 67

PAGE

ENACTMENT BY REFERENCE—Continued.
revival by repeals not within the provision 67
local act not revived 68
reference by way of illustration not within the provision 68
pre-existing system cannot be transferred to new officials 69, 73
provision for enforcement under pre-existing law may be sustained in a supplement 72
but not in an original enactment 74
legislative practice illustrated 74
enactments by amendment disregarding intervening legislation 84
provision not evaded by expository statute 83
extending a local statute enacted prior to 1874 which extended another act by title 89
difficulty in drafting bills illustrated 202

EQUAL PROTECTION OF THE LAW.
see CLASSIFICATION.

EQUALITY.
see CLASSIFICATION.

ERROR IN RECITAL.
of original acts 44, 46, 47

EVIDENCE.
see JUDICIAL MATTERS.

EXCEPTION.
of locality governed by special constitutional provision proper 109
special laws may be saved by 111, 114, 115

EXEMPTION.
see GERMANE.
see PROVISOS, EXCEPTIONS, AND AMENDMENTS.

EXPOSITORY STATUTE.
violates Article III, Section 6 62, 83

PAGE

EXPRESS AMENDMENTS.
are the object of Article III, Section 6 61

EXPRESSIO UNIUS EST EXCLUSIO ULTERIUS.
maxim applied to titles 13, 46

FEES.
see CLASSIFICATION.
see COUNTIES.

FENCES.
see COUNTIES.
see OPTION.

FISH.
not included in title specifying game 47

FOREIGN INSURANCE COMPANIES.
see CLASSIFICATION.

FORMER STATUTE.
need not be recited in amendment 62, 63
unless amended by addition to a section 64

FREEHOLDS.
see RES INTER ALIOS PRINCIPLE.

GAME.
see FISH.

GENERAL APPROPRIATION BILL.
constitutional provisions relating to 1
may incidentally create an office 53

GENERAL LAW.
defined and illustrated 99, 100, 101
see CLASSIFICATION.

GENERALITY OF TITLE.
act entitled to incorporate a company will not affect status of navigable stream 19
but may pass power of eminent domain 20
cannot relieve from liability to repair streets 20
nor reduce rate of taxation 20

PAGE

GERMANE.

what germane means 34
county seat and county boundary 34
assessments and streets 34
court and clerk and grand jury 34
persons and parties 34
sewers and drains and charges for use 34
public buildings and public square 34
borrowing money and constructing bridges 34
borough and town plans and surveys 34
city controller designated county officer in salary act 34
Brooks law 34
costs and taxes and water rents 34
city officers and change of class of cities 34
taxing dogs and declaring them property 35
release of husband's claim action by husband and wife 35
annexation and incorporation 35
elections of public officers and to increase debt 36
wholesalers and brewers and distillers 37
enabling act containing a disabling clause 37
summary convictions and penalties 38
street railways on rural roads 38
borough improvement and sewers and pavements 38
elective tax in general tax law 38
taxation and appropriation 38
fruits *et cetera* may include trees 39
executions 39
adoption and collateral inheritance tax exemption 39
telegraph companies and telephone companies 39
what is germane in license laws 46
highways and drains 40

HIGHWAYS.

are a municipal subject 261
except in relation to judicial procedure involved 262

PAGE

HIGHWAYS—Continued.
assessment for benefits a municipal power 262
liens valid 262
unusual provisions of doubtful validity 262
see SUBJECT.
see GERMANE.

HUSBAND AND WIFE.
see GERMANE.

IDENTIFICATION.
of original acts in supplements and amendments 44

IMPLIED REPEALS.
not within Article III, Section 6 67

INCONSISTENCY BETWEEN TITLE AND ACT.
not permissible 21
inconsistent proviso void 21
acknowledgments not regulated where title relates to records 21
title relating to leaseholds act to property upon them 22
lottery gifts does not cover gifts 22
protection of miners suggests safety not criminal liability 23
inconsistency in proviso 52, 54

INDEPENDENT ENACTMENTS.
as affected by Article III, Section 6 64
referring to pre-existing law 68, 82, 202

INDEX.
title is not an index to act 17, 19

INDEXES.
see COUNTIES.
see JUDICIAL MATTERS.

JUDGMENTS.
see JUDICIAL MATTERS.

PAGE

JUDICIAL MATTERS.

authorizing appeals except in certain counties invalid 263
giving special remedies to certain officers invalid 263
enlarging civil jurisdiction of justices of the peace 263
excepting Philadelphia 263
giving special effect to *scirc facias* in city invalid 263
providing special procedure in the exercise of the power of eminent domain invalid 263
perpetual lien of taxes in cities doubtful 264
prescribing effect of judicial sales in cities invalid 264
providing special remedy and limitation in favor of veterans invalid 264
special rule of evidence in city of certain class invalid 265
special effect of judgment in city of certain class invalid 265
special procedure invalid 265
provision for election of constables in boroughs and townships valid 265
in classes of cities valid 265
authorizing judicial appointment of assessors in city of certain class invalid 266
classification of election contests 266
special jurisdiction thereunder 266
prescribing effect of judicial sales 266
curative laws as to 267

JUDICIAL QUESTION.

validity of classification a judicial question 136, 137

JUDICIAL SALES.

see JUDICIAL MATTERS.
see CITIES.
see MUNICIPAL AFFAIRS.

PAGE

LABOR, TRADE, MINING, OR MANUFACTURING.
prohibiting railway discrimination 279
regulation of anthracite mines valid 279
classification of anthracite mines valid 279
similar provisions as to bituminous mines valid 281
provision for lien in favor of employees in working timber and bark valid 281
semi-monthly pay law doubted 281
see CLASSIFICATION.

LAWS OF TRADE.
see CLASSIFICATION.

LEASEHOLDS.
see RES INTER ALIOS PRINCIPLE.
in title will not cover freehold 17

LEGISLATIVE PRACTICE.
illustrating Article III, Section 6 74
see CONSTRUCTION.
see APPROPRIATION BILL.
see ORIGINAL ACTS AND GENERAL SUPPLEMENTS AND AMENDMENTS.

LICENSES.
see RES INTER ALIOS PRINCIPLE.
see GERMANE.
see ORIGINAL ACTS AND GENERAL SUPPLEMENTS AND AMENDMENTS.

LIENS.
special effect of *scire facias* in cities invalid 172
municipal liens proper subject of city class legislation 181
tax lien whether owner named or not invalid 185
municipal liens are municipal subjects 195, 196
priority of 196
perpetuity of 196
indivestible 196
uniformity of regulation of 198, 199

PAGE

LIENS—Continued.
provision for mechanics' liens excluding certain counties invalid 268
provision for special effect of *scire facias* in certain cities invalid 268, 269
liens for benefits in cities of certain class valid 268
unusual provisions as to doubtful 268
perpetuity lien of taxes in cities of certain class doubtful 268
lien without regard to whether owner named or not invalid 268
lien for all local taxes certain classes of cities excepted invalid 268
see JUDICIAL MATTERS.
see MUNICIPAL AFFAIRS.
see CITIES.

LIVERY-STABLE KEEPERS.
see SUBJECT.

LOCAL ACT.
not revived by repeal of repealing act 68
extended by title prior to 1874 may be extended by recital 89
see LOCAL AND SPECIAL LEGISLATION.

LOCAL LAW.
defined and illustrated 99
definition of not changed by Constitution 129
see LOCAL AND SPECIAL LEGISLATION.

LOCAL AND SPECIAL LEGISLATION.
the constitutional provision relating to 91
THE CONSTITUTIONAL PROVISIONS GENERALLY 95
affirmative and negative 95
general and specific 96
uniformity of law 96
political, executive, or administrative matters 97
legislative matters 97

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.

judicial matters 97
provisions in the singular 97, 98
provisions for special legislation 97, 98
special law defined 98
local law defined 98
illustrations of definition special law 98
illustrations of definition local law 99
classification the test 98
general law governs a class 99
if limited to part it is special 99
if it embraces all it is general though not operative in the Commonwealth at large 100
distinction between a special and a general law relating to a class of cities 100
on a general subject a law is special if a single county be excluded 101

CONSTRUCTION OF THE PROVISIONS AS REMEDIAL 101
the historical occasion of their adoption 101, 102
intent to eradicate local and special legislation and require general wherever practicable 102, 103
indirect as well as direct violation to be prevented 103
broad construction of word "affairs" 103
what are local affairs 103, 104, 105
taxation though an affair of sovereignty is also a local affair 105
construction of provisions—Mr. Buckalew's suggestion 106
classification absolutely necessary in some cases 106
municipal affairs, instances of 106
necessity for classification as to 106, 107

LIMITATIONS GOVERN ONLY THE GENERAL ASSEMBLY 107
borough ordinance not a law within the provisions 107
municipal legislation must necessarily include particular local ordinances 108

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.

but not in matters of taxation 108

EXCEPTION PURSUANT TO CONSTITUTION DOES NOT RENDER LAW SPECIAL 109

exception of locality governed by another statute renders law special 109

construction must be uniform in like cases 110

classification not admissible when 110

taxation is a local affair 110

law governing locality local though benefits of it may be available to all inhabitants of the Commonwealth 110

SPECIAL LAWS MAY BE SAVED BY EXCEPTION 111

in a general statute 111

Constitution as a rule prospective in effect 111

Constitution as a rule did not affect pre-existing legislation 111

for example, special tax laws 111

general statute may save special laws 111

for example, special tax laws 114

special liquor laws 114

special road laws 114

distinction between saving special laws and excepting territory in which they are operative 115

act is general though not retroactive 116

ACT GENERAL AS TO PERSONS LOCAL AS TO SUBJECT-MATTER 116

act general as to married women and special as to Philadelphia loans 116

act general as to parties entitled to act, but local as to territory invalid 117

GENERAL LAW MAY CONTAIN SPECIAL PROVISIONS NECESSARY TO RENDER IT EFFECTIVE 117

special provisions to make a general law operative in a certain city of a class will not invalidiate law 117

CLASSIFICATION 121

general topic beyond scope of this work 121

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.
principle of classification not capable of definition 121
primary prohibitions of special legislation 121
these relate to things formerly permitted 121
secondary prohibitions of special legislation 121
they can only be applied cumulatively 121
because they depend on whether the rule of classification has been violated 121
arbitrary classification 122
widows of druggists 122
railroad companies as to certain liabilities 123
equality before the law 123
equal protection of the laws 123
classification as affected by Federal Constitution 124
must be reasonable 124
cannot be invidious 125
hostile 125
unusual 125
must have adequate basis 126
governed by principle of declaration of independence as to equality 128
by Article I, Section 1, Bill of Rights 128
alien tax law an instance of improper classification 129
POWER TO CLASSIFY NOT ABRIDGED BY CONSTITUTION 129
Constitution has made certain classes 129
recognizes power to classify 129
laws based on constitutional classification not local or special 129
definition of local or special laws not changed by Constitution 129
power to classify not abridged 130
for example, cities 130
for example, subjects of taxation 130
instances of constitutional classification 131
legislature cannot modify 131

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.
sub-classification of constitutional class 132
distinction between local and general statute as to class of officers 132
classification of coal mines 134
police power as affected by prohibitions of local and special legislation 134, 245
foreign insurance companies a class 135
PROPER CLASSIFICATION A JUDICIAL QUESTION 135
grounds of classification 136
custom 136
nature 136
laws of trade 136
necessity 136
presumption probably favors legislative classification 137
infringement of Constitution the test 137
the subject further illustrated 137
POPULATION THE ONLY BASIS OF CITY OR COUNTY CLASSIFICATION 139
CLASSIFICATION OF POLITICAL SUB-DIVISIONS MUST BE COMPLETE 140
CLASSIFICATION MUST NOT BE FALSE, PRETENDED, EVASIVE NOR EXCESSIVE 141
instance of false classification—courts 141
instance of evasive classification—courts 142
instance of pretended classification—cemeteries 142
instance of pretended classification with individualizing definition—cemeteries 143
instance of false classification—public buildings 144
instance of excessive classification—cities 144
distinction between general and particular classification 145
three classes of cities final 146
more than three unnecessary 146
multiplication of classes leads to special legislation 146

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.
CLASSIFICATION MUST BE OPERATIVE FROM TIME TO TIME SO AS TO PERMIT TRANSITION 147
instance of violation—counties 148
TRANSITION 148
Luzerne Co. subject to Act of 1876 148
fee system restored on division of county 148
census the test of population 149
salary system restored in Luzerne county in 1890 150
Schuylkill became subject to in 1890 150
special statutory provisions for transition 151
transition of city 151
effect of 151
works only necessary changes to adjust to class 151
office and officers remain as before save as effected by new provisions 152
general laws relating to the class prevail over special formerly applicable 153
for example, general system of taxation supersedes former special system 155
OPTION UNDER CLASSIFICATION ACTS 156
not at first regarded as admissible 156
special option for a class invalid 157
general option for a class valid 157
provided the purpose is to substitute a general for special systems 157
option tending to uniformity valid 158
partial option invalid 159
option tending to diversity invalid 159
option must include whole system, not part 160
option for special classes invalid 160
working of valid option law illustrated 162
for purposes of classification all cities not belonging to the first or second class belong to the third 163
for purposes of municipal government only those belonging to the third class which are governed by the general system 163

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.
class legislation not operative in non-accepting cities 163
OPTION AS RELATED TO LOCAL AND SPECIAL LEGISLATION 165
local option invalid 165
because it produces, or may produce, local results 166
for example, option in relation to fences 166
the test is possible results 167
local option invalid as an evasion of the Constitution 168
such option distinguished from choice of methods applicable to all of a class 168
for example, in the maintenance of roads 168
summary of conclusions as to option 170
constitutional provisions as to option 171
option as to support of poor invalid 172
LEGISLATION FOR CITIES BY CLASSES MUST BE CONFINED TO MUNICIPAL MATTERS PROPER 172
prescribing effect of *scire facias* in cities invalid 172
incorporating street railways in given classes of cities invalid 173
general rights of persons and property must be secured by general laws 173
class legislation for cities must be confined to municipal purposes 173
incorporation and government of street railways is not such a purpose 174
regulating exercise of power of eminent domain is not 174
judicial procedure as to such exercise is not 174
instances of proper and improper legislation 175
procedure in the exercise of the power of eminent domain in street laws invalid 177
distinction between municipal and non-municipal purposes again pointed out 178
test is the effect of the law 179

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.
it must be confined to municipal powers or duties or municipal officers or duties 179
caring for the poor of the city a municipal function 180
rules as to exercise of power of eminent domain reaffirmed 180
municipal liens proper subject 181
municipal taxation proper subject 181
assessments for benefits proper 181
unusual provisions as to foregoing questionable 182
street railway motive-power proper subject 183
regulation of distinguished from incorporation statutes 184
provision for lien whether entered against owner or not invalid 185
provision that judicial sale shall vest title invalid 185
municipal taxation for municipal purposes 186
properly a subject of class legislation for cities 186
so is annexation of territory 186
confusion of classification in relation to taxes invalid 187
Ruan street, argument of 188
dissents in 188
Ruan street explained 190
Ruan street summary of act in question 191
constitutional classification remarks of Slagle, J. 192
municipal highways as municipal subjects 193
how they differ from country highways 193
uniform regulation of right of eminent domain 194
sewers as municipal subjects 194
municipal liens as municipal subjects 195
distinction between assessments for benefits and damages for taking or injuring of property 195
assessments depend on taxing power 195
taking and injuring on right of eminent domain 195

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.

municipal tax liens 196
priority of 196
perpetuity of 196
undivestible tax liens 196
uniformity of regulation among different classes of cities 198, 199
how far class legislation may regulate enforcement of city taxes 201
municipal liens and taxation as related to enactment by reference 202
difficulties in drafting bills illustrated 202
unity of subject of volume pointed out 202

WHAT ARE MUNICIPAL MATTERS PROPER, AND WHAT ARE NOT 203
clauses of Article III relating to cities 203
how construed 203
tests of validity of class legislation for cities 204
classification of constitutional provisions 204
those relating directly to municipal affairs 204
those having no relation to municipal affairs 205
those relating to municipal affairs or not according to circumstances 206
provisions under first class 204
provisions under second class 205
provisions under third class 206
explanation of provisions under third class 206
explanation of provisions under second class 207
harmony of decided cases with the foregoing 209
summary of conclusions 211
what are municipal affairs generally 211
provisions of general borough law examined 212
municipal subjects as shown thereby 214

ACTS OF ASSEMBLY VOID IN PART 214
general rule 214
manner in which questions arise 215
rule of essential parts 215
rule of single object 215

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.
rule as to two or more objects 215
time and use 216
VALIDITY OF THINGS EXECUTED UNDER INVALID ACTS OF ASSEMBLY 216
rule as to acts done under color of authority 217
rule as to officers *de facto* 217
distinction between personal immunity and creation of rights under invalid laws 218
immunity of officer extends to person acting under his direction 218
rule as to *de facto* streets and highways 219
de facto officers 220, 221
effect of regular proceedings under color of statute 222
de facto city 223
borough becoming a city within invalid classification act remains a city of the third class 223
CURATIVE STATUTES 223
legislature may ratify what it may authorize 223
legislature may not ratify what it could not authorize 224
may ratify assessments for local improvements 224
or paving 225
taxation 226
ordinances of *de facto* city 227
legalized *de facto* officers 229
QUESTIONS OF REPEAL 230
class legislation unaffected by subsequent laws general in the broad sense 230
class legislation does not repeal pre-existing local legislation 231
class legislation governs when city enters a class 232
hence its prior local laws yield to class legislation 233
for example, on the subject of taxation 233
legislation enjoined by the Constitution tend-

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.
ing to uniformity will frequently prevail over special laws 234-236
for example, regulation of increase of indebtedness for municipalities 234
general legislation sometimes cumulative with class legislation 235
special law remains in effect notwithstanding division of territory 236, 237
LOCAL AFFAIRS OF POLITICAL SUB-DIVISIONS OF THE STATE 239
summary of provisions not infringed 239
the constitutional provisions construed as remedial 239
no distinction between direct and incidental infringements 239
provisions as to local affairs which have been construed 240
COUNTIES 241
local provision for courts invalid 241
official salaries and fees 241
authorizing appeals 241
regulating fences 241
taxing fees of officers valid 241
doubt as to whether poor districts are included within the provisions 241
police power 245
salaries 245
appeals 246
prisoners 246
indexes in courts 247
actions by veterans against counties, etc. 247
lien of taxes excepting certain classes of cities invalid 248
provision for county buildings excepting a county invalid 248
furnishing offices at county seat valid 248
relief of poor where not cared for at county expense invalid 249

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.

CITIES 249
prescribing effect of *scire facias* in certain class of cities invalid 249
or for incorporation of street railways 249
or providing special judicial procedure for assessment of damages 248
or regulating school affairs 250
laying out of highways a municipal subject 250
and deciding when their opening shall take place 250
and institution of proceedings therefor 250
and grading, paving, sewering, and lighting 250
judicial proceedings not within the principle of classification 250
taxation a municipal power 250
provision for liens for assessment proper 250
unusual provisions of doubtful validity 250
validity of perpetual lien of taxes doubtful 250
regulation of street railway motive power proper 250
provision for annexation of territory proper 250
provision as to tax liens excepting certain classes of cities invalid 251
provision that taxes shall be liens without regard to whether the true owner is named invalid 251
provision that judicial sale of real estate shall vest title whether owner named or not invalid 251, 253, 254
perpetual lien enforced on distribution 254
priority of lien enforced on distribution 254
regulation of milk traffic doubtful 254
requiring a certain court to appoint assessors invalid 254
regulation of plumbers valid 255
annexation of territory valid 255
election of constables in cities of certain classes valid 255

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.
poor affairs in cities of certain classes valid 255
prescribing effect of judgment in city of certain class invalid 255
BOROUGHS 256
annexation of territory proper 256
regulation of collection of taxes in boroughs proper 256
authorizing improvements of streets in boroughs proper 256
authorizing assessment for benefits in such cases valid 256
TOWNSHIPS 257
act relating to a certain township invalid 257
regulating collection of taxes in boroughs and townships valid 257
enabling taxpayers to contract for making roads in townships valid 257
SCHOOL DISTRICTS 257
regulation of school affairs in cities of certain class invalid 257, 258, 259, 260, 261
HIGHWAYS 261
are a municipal subject 261
except in relation to judicial procedure involved 262
assessment for benefits a municipal power 262
liens valid 262
unusual provisions of doubtful validity 262
JUDICIAL MATTERS 263
authorizing appeals except in certain counties invalid 263
giving special remedies to certain officers invalid 263
enlarging civil jurisdiction of justices of the peace 263
excepting Philadelphia 263
giving special effect to *scire facias* in city invalid 263

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.
providing special procedure in the exercise of the power of eminent domain invalid 263
perpetual lien of taxes in cities doubtful 264
prescribing effect of judicial sales in cities invalid 264
providing special remedy and limitation in favor of veterans invalid 264
special rule of evidence in city of certain class invalid 265
special effect of judgment in city of certain class invalid 265
special procedure invalid 265
provision for election of constables in boroughs and townships valid 265
in classes of cities valid 265
authorizing judicial appointment of assessors in city of certain class invalid 266
classification of election contests 266
special jurisdiction thereunder 266
prescribing effect of judicial sales 267
curative laws as to 267
LIENS 267
provisions for mechanics' liens excluding certain counties invalid 268
provision for special effect of *scire facias* in certain cities invalid 268, 269
liens for benefits in cities of certain class valid 268
unusual provisions as to doubtful 268
perpetual lien of taxes in cities of certain class doubtful 268
lien without regard to whether owner named or not invalid 268
lien for all local taxes, certain classes of cities excepted invalid 268
TAXATION 269
requiring levy of tax for certain purpose in certain township invalid 269

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.
authorizing appeals excepting certain counties invalid 270
regulation of collection of taxes in boroughs and townships valid 270
taxation for benefits in class of cities valid 270
perpetual lien in class of cities doubtful 270
municipal taxation a municipal subject 270
authorizing township taxpayers to maintain roads by contract in lieu of paying taxes valid 270
taxation of fees of officers in counties having less than 150,000 inhabitants valid 270
provision for lien of local taxes excepting certain classes of cities invalid 270, 271
direct inheritance tax doubtful 276
classification of real estate valid 271
election of assessors in boroughs and townships valid 272
system for collection of taxes in boroughs and townships valid 273, 274, 275
ELECTIONS 275
special election law prior to Constitution in effect after its adoption 276
Baker Ballot Law valid 276
Superior Court Act valid 276
PRIVATE CORPORATIONS 276
provision for incorporation of street railways in certain cities invalid 277, 278
regulation of motive power in cities of certain class valid 277
special classification of bridges valid 278
provisions of Article XVI, Section 10, Clause 2 278
CEMETERIES, ETC. 279
cases as to 279
LABOR, TRADE, MINING, OR MANUFACTURING 279
prohibiting railway discrimination 279
regulation of anthracite mines valid 279

PAGE

LOCAL AND SPECIAL LEGISLATION—Continued.
classification of anthracite mines valid 279
similar provisions as to bituminous mines valid 281
provision for lien in favor of employees in working timber and bark valid 281
semi-monthly pay law doubted 281
SPECIAL PRIVILEGES AND IMMUNITIES 281
special rights of action in certain officers invalid 281
special provisions as to actions for wages of manual labor doubtful 282
special provisions for action by veterans invalid 282
special school privileges to children of soldiers invalid 282
PARTIAL REPEAL OF GENERAL LAW 283
special provision as to statute of limitations invalid 283
CASES WITHIN GENERAL LAW OF JUDICIAL JURISDICTION 283
exclusion of retroactive effect valid 283
cumulative remedy valid 284
NOTICE 284
presumption of notice 284
whether presumption may be rebutted 285, 286

LOG ROLLING.
prevented 10

MANDATORY.
provision as to titles of acts is 5
provision of Article III, Section 6, is 61

MANUAL LABOR.
see SUBJECT.
see SPECIAL PRIVILEGES AND IMMUNITIES.

MILK.
see CITIES.

PAGE

MINERS.
see SUBJECT.

MINES.
see CLASSIFICATION.

MISCHIEF.
intended to be remedied by Article III, Section 6 61
by provision as to titles 10
by provisions as to local and special legislation 101, 102, 103

MOTOR POWER COMPANIES.
see RES INTER ALIOS PRINCIPLE.

MULTIPLICITY.
see TWO SUBJECTS.

MUNICIPAL AFFAIRS.
prescribing effect of *scire facias* in cities invalid 172
incorporating street railways in given classes of cities invalid 173
general rights of persons and property must be secured by general laws 173
class legislation for cities must be confined to municipal purposes 173
incorporation and government of street railways is not such a purpose 174
regulating exercise of power of eminent domain is not 174
judicial procedure as to such exercise is not 174
instances of proper and improper legislation 175
procedure in the exercise of the power of eminent domain in street laws invalid 177
distinction between municipal and non-municipal purposes again pointed out 178
test is the effect of the law 179
it must be confined to municipal powers or duties or municipal officers or duties 179

PAGE

MUNICIPAL AFFAIRS—Continued.

caring for the poor of the city a municipal function 180
rule as to exercise of power of eminent domain reaffirmed 180
municipal liens proper subject 181
municipal taxation proper subject 181
assessment for benefits proper 181
unusual provisions as to foregoing questionable 182
street railway motive power proper subject 183
regulation of distinguished from incorporation statutes 184
provision for lien whether entered against owner or not invalid 185
provision that judicial sale shall vest title invalid 185
municipal taxation for municipal purposes 186
properly a subject of class legislation for cities 186
so is annexation of territory 186
confusion of classification in relation to taxes invalid 187
Ruan street argument of 188
dissents in 188
Ruan street explained 190
Ruan street summary of act in question 191
constitutional classification remarks of Slagle, J. 192
municipal highways as municipal subjects 193
how they differ from country highways 193
uniform regulation of right of eminent domain 194
sewers as municipal subjects 194
municipal liens as municipal subjects 195
distinction between assessments for benefits and damages for taking or injuring of property 195
assessments depend on taxing power 195
taking and injuring on right of eminent domain 195

PAGE

MUNICIPAL AFFAIRS—Continued.

municipal tax liens 196
priority of 196
perpetuity of 196
undivestible tax liens 196
uniformity of regulation among different classes of cities 198, 199
how far class regulation may regulate enforcement of city taxes 201
municipal liens and taxation as related to enactment by reference 202
difficulties in drafting bills illustrated 202
unity of subject of volume pointed out 202
WHAT ARE MUNICIPAL MATTERS PROPER AND WHAT ARE NOT 203
clause of Article III relating to cities 203
how construed 203
tests of validity of class legislation for cities 204
classification of constitutional provisions 204
those relating directly to municipal affairs 204
those having no relation to municipal affairs 205
those relating to municipal affairs or not, according to circumstances 206
provisions under first class 204
provisions under second class 205
provisions under third class 206
explanation of provisions under third class 206
explanation of provisions under second class 207
harmony of decided cases with the foregoing 209
summary of conclusions 211
what are municipal affairs generally 211
provisions of general borough law examined 212
municipal subjects as shown thereby 214

MUNICIPAL ASSESSMENTS.

see MUNICIPAL AFFAIRS.
see JUDICIAL MATTERS.
see CITIES.

PAGE

MUNICIPAL LEGISLATION.
not within provisions as to local and special legislation 107
these provisions apply only to General Assembly 107

MUNICIPAL LIENS.
see MUNICIPAL AFFAIRS.
see TAXATION.
see CITIES.
see JUDICIAL MATTERS.

NATURE.
see CLASSIFICATION.

NAVIGABLE STREAM.
not affected by a title which merely names an improvement company 19

NECESSITY.
see CLASSIFICATION.

NOTICE.
title must give fair notice 18
presumption of notice of special bill 284
whether presumption may be rebutted 285, 286
object of provision as to enactments by reference 61

OMNIBUS LEGISLATION.
prevented by provision as to titles 11

OPTION.
not at first regarded as admissible under classification acts 156
special option for a class invalid 157
general option for a class valid 157
provided the purpose is to substitute a general for special systems 157
option tending to uniformity valid 158
partial option invalid 159
option tending to diversity invalid 159

PAGE

OPTION—Continued.

option must include whole system not part 160
option for special classes invalid 160
working of valid option law illustrated 162
for purposes of classification all cities not belonging to the first or second class belong to the third 163
for purposes of municipal government only those belonging to the third class which are governed by the general system 163
class legislation not operative in non-accepting cities 163
option as related to local and special legislation 165
local option invalid 165
because it produces, or may produce, local results 166
for example, option in relation to fences 166
the test is possible results 167
local option invalid as an evasion of the Constitution 168
such option distinguished from choice of methods applicable to all of a class 168
for example, in the maintenance of roads 168
summary of conclusions as to option 170
constitutional provisions as to option 171
option as to support of poor invalid 172

ORIGINAL ACTS AND GENERAL SUPPLEMENTS AND AMENDMENTS.

identification of original sufficient 43, 44, 45
general supplement may include what original title might have included 42, 43, 44
apparently erroneous recital not fatal 43
when title of supplement insufficient 43, 46
when sufficient 43, 47
general amendment sufficient 44
generality in license law 46
error in recital 47

PAGE

ORIGINAL ACTS AND SPECIFIC AMENDMENTS AND SUPPLEMENTS.

maxim *expressio unius* applies 47
fish and game 47
destructive animals specified and not specified 48

PARTIAL REPEAL OF GENERAL LAW.

special provisions as to statute of limitations invalid 283

PENALTIES.

see GERMANE.

PERPETUAL LIENS.

see LIENS.

PERSONS.

general as to persons local as to subject-matter valid 116
invalid 117

PERSONS AND PARTIES.

see GERMANE.

PLUMBERS.

see CITIES.

POLICE POWER.

whether affected by provisions as to local and special legislation 134, 245

POOR.

see RES INTER ALIOS PRINCIPLE.
see CITIES.
see MUNICIPAL AFFAIRS.
see COUNTIES.

POPULATION.

the only basis of city or county classification 139
census the only test of 149

PAGE

PRE-EXISTING SYSTEM.
not transferred by reference 69, 73, 84
difficulties in drafting bills illustrated 202

PRESUMPTION.
favors legislative classification 137

PRIORITY OF LIENS.
see LIENS.

PRISONERS.
see COUNTIES.

PRIVATE CORPORATIONS.
provision for incorporation of street railways in certain cities invalid 277, 278
regulation of motive power in cities of certain class valid 277
special classification of bridges valid 278
provision of Article XVI, Section 10, Clause 2 278

PROCEDURE.
see JUDICIAL MATTERS.

PROTHONOTARIES' CLERKS.
may be provided for in general appropriation bill 53

PROVISO.
inconsistent with title void 21, 52, 53
limiting territorial scope of act 22

PROVISOS, EXCEPTIONS, AND AMENDMENTS.
inconsistent proviso void 21, 52, 53
amendment by proviso 52
exception need not be specified in title 53
exemption need not be specified in title 53

PROVISION FOR ENFORCEMENT.
may be extended by reference in a supplement 72
not in original enactment 74

PAGE

PUBLIC BUILDINGS.
see GERMANE.
see CLASSIFICATION.
see MUNICIPAL AFFAIRS.
see CITIES.

PUBLIC SQUARE.
see GERMANE.

QUESTIONS OF REPEAL.
class legislation unaffected by subsequent laws general in the broad sense 230
class legislation does not repeal pre-existing local legislation 231
class legislation governs when city enters a class 232
hence its prior local laws yield to class legislation 233
for example, on the subject of taxation 233
legislation enjoined by the Constitution tending to uniformity will frequently prevail over special laws 234, 236
for example, regulation of increase of indebtedness of municipalities 234
general legislation sometimes cumulative with class legislation 235
special law remains in effect notwithstanding division of territory 236, 237
see REPEAL.

QUOTATION MARKS.
error in title will be corrected by construction 13

RAILWAY.
used in title meaning of 17

REASONABLE INQUIRY.
sufficient if title suggests 19

RECORDS.
see RES INTER ALIOS PRINCIPLE.

PAGE

REFERENCE.
by way of illustration not within Article III, Section 6 68

REPEAL.
by implication not within Article III, Section 6 67
by title not within Article III, Section 6 67
whether repeal must be specified in title 46
see REPEAL AND RE-ENACTMENT.
see TWO SUBJECTS.
see QUESTIONS OF REPEAL.
see REVIVAL BY REPEAL.

REPEAL AND RE-ENACTMENT.
when repeal need not be specified in title 48, 51
when repeal must be specified 48, 49, 50, 51
re-enactment not noticing intervening repeal 49

RES INTER ALIOS PRINCIPLE.
as related to titles of acts 23
leasehold expressed cannot affect freehold 23
one city and county expressed cannot affect another 23
city expressed townships cannot be affected 23
borough expressed county cannot be affected 23, 24
incorporation expressed navigable stream cannot be affected 24
county lines expressed borough and township not affected 24
county controllers expressed county auditors not affected 24
perfecting records expressed county not chargeable with expense 24
borough expressed road district not affected 24
motor power companies expressed doubt as to leasing passenger railways 25
cities expressed annexation covered 25
taxes in boroughs and townships expressed county taxes covered 25

PAGE

RES INTER ALIOS PRINCIPLE—Continued.
boroughs and townships expressed county not affected 27
deputy coroners expressed county not chargeable with salaries 27
regulation of licenses expressed treasurer's fee not taken away 27
regulation of the poor expressed county not chargeable 28
city expressed county not chargeable with bridge 28
a township being specified another township not affected 29
borough being specified county not chargeable 29

RETROACTIVE.
act is general though not retroactive 116
see CONSTRUCTION.

REVIVAL BY REPEAL
not within Article III, Section 6 67
local act not revived by repeal of repealing act 68

ROAD DISTRICTS.
see RES INTER ALIOS PRINCIPLE.

SALARIES.
see CLASSIFICATION.
see COUNTIES.
see TRANSITION.

SALE.
title specifying may cover gift 20

SCHOOL DISTRICTS.
regulation of school affairs in cities of certain class invalid 257, 258, 259, 260, 261

SCIRE FACIAS.
see MUNICIPAL AFFAIRS.
see JUDICIAL MATTERS.
see LIENS.

PAGE

SELF-SUSTAINING.
enactments must be 61

SEWERS AND DRAINS.
see GERMANE.
see MUNICIPAL AFFAIRS.

SPECIAL LAW.
defined and illustrated 98
definition of not changed by Constitution 129

SPECIAL PRIVILEGES AND IMMUNITIES.
special rights of action in certain officers invalid 281
special provisions as to actions for wages of manual labor doubtful 282
special provisions for action by veterans invalid 282
special school privileges to children of soldiers invalid 282
see JUDICIAL MATTERS.

SPECIAL PROVISIONS.
necessary to render general law effective proper 117

STREET PASSENGER RAILWAY COMPANIES.
see RES INTER ALIOS PRINCIPLE.
see GERMANE.
see CITIES.
see PRIVATE CORPORATIONS.

STREETS.
see SUBJECT.
see GERMANE.
see CITIES.
see HIGHWAYS.
see MUNICIPAL AFFAIRS.

SUBJECT.
unity of 11, 29, 30
county and county seat 29
streets and assessments 30

PAGE

SUBJECT—Continued.
details of subject 30
corollary of subject 30
cognate matters 30
change of classification and result as to officers 31
of title and object of act 31
what included with regulation of highways, etc. 31
protection of livery stable-keepers 32
protection of miners 23
divers classes of cities 32
cities and school districts 33
divers streets (special act) 33
appeals wages of manual labor 33
see TWO SUBJECTS.
see APPROPRIATION BILL.

SUMMARY CONVICTIONS.
see GERMANE.

SUPPLEMENTS.
not usually within Article III, Section 6 65
by way of extension are 66
may adopt remedies by reference 72
see ORIGINAL ACTS AND GENERAL SUPPLEMENTS
see ORIGINAL ACTS AND SPECIFIC SUPPLEMENTS

TAXATION.
provisions relating to 91, 269
though an affair of sovereignty is also a local affair 105, 110
general statute may save special tax laws 114
alien tax law invalid 129
classification of subjects of taxation 129, 130, 137
municipal taxation proper subject for municipal class legislation 181, 186, 250, 270
and so of assessments for benefits 181
confusion of local classification invalid 187
assessments depend on taxing power 195
curative statutes valid 226

PAGE

TAXATION—Continued.

prior local tax laws yield to general where a city enters a class 232, 233
taxation of official fees, counties under 150,000 241
provision for collection of taxes in boroughs proper 256, 270
and so in townships 257, 270
act requiring levy of tax for certain purpose in certain township invalid 269
authorizing appeals except in certain counties invalid 270
taxation for benefits in class of cities invalid 270
municipal taxation a municipal subject 270
taxation fees of officers counties less than 150,000 270
direct inheritance tax of doubtful validity 276
classification of real estate for taxation valid 271
election of assessors in boroughs and townships valid 272
system of collection of taxes in boroughs and townships valid 273, 274, 275

see LIENS.
see CITIES.
see MUNICIPAL AFFAIRS.
see CLASSIFICATION.

TAXES.

see RES INTER ALIOS PRINCIPLE.
see GERMANE.

TITLES OF ACTS OF ASSEMBLY.

constitutional provisions relating to 1
the constitutional provisions are mandatory 5
title is part of the act 6
was not so formerly 6
roll is conclusive evidence of title 7
effect of legislative marks on 7
must title accompany bill through the legislature? 8, 9, 10

PAGE

TITLES OF ACTS OF ASSEMBLY—Continued.

PURPOSE OF PROVISION AS TO TITLE 10
log rolling prevented 10
omnibus legislation prevented 11
CLEARNESS OF TITLE REQUIRED 11
title not aided by inference of knowledge of matters *dehors* the language used 12
must be self-sufficient 14
MEASURES SCOPE OF ACT 14
CONSTRUCTION OF PROVISIONS RELATING TO TITLES 12
legislative usage recognized 12
construction generally 13
quotation marks in title 13
maxim *ut res magis valeat* applies 13
maxim *expressio unius* applies 13, 46
only that portion of act fails which is not covered by the title 15
title is not an index 17, 19
must give fair notice 18
must reasonably lead to inquiry 19
must be sufficiently specific 19
must not be so general as to mislead 19
general title to incorporate may probably carry power of eminent domain 20
may not affect status of navigable stream 19
general title cannot relieve from liability to repair streets 20
nor reduce rate of taxation 20
sale may include gift 20
INCONSISTENCY BETWEEN TITLE AND ACT 21
not permissible 21
inconsistent proviso void 21
acknowledgments not covered where title relates to records 21
title relating to leaseholds act to property upon them 22
lottery gifts does not govern gifts 22

PAGE

TITLES OF ACTS OF ASSEMBLY—Continued.
protection of miners suggest safety not criminal liability 23
inconsistency in proviso 52, 54
RES INTER ALIOS PRINCIPLE AS RELATING TO TITLES 23
leasehold expressed cannot affect freehold 23
one city and county expressed cannot affect another 23
city expressed townships cannot be affected 23
borough expressed county cannot be affected 23, 24
incorporation expressed navigable stream cannot be affected 24
county lines expressed borough and township not affected 24
county controllers expressed county auditors not affected 24
perfecting records expressed county not chargeable with expense 24
borough expressed road district not affected 24
motor power companies expressed doubt as to leasing passenger railways 25
cities expressed annexation covered 25
taxes in boroughs and townships expressed county taxes covered 25
boroughs and townships expressed county not affected 27
deputy coroners expressed county not chargeable with salaries 27
regulation of licenses expressed treasurer's fee not taken away 27
city expressed county not chargeable with bridge 28
a township being specified another township not affected 29
borough being specified county not chargeable 29
UNITY OF SUBJECT 11, 29, 30
county and county seat 29

PAGE

TITLES OF ACTS OF ASSEMBLY—Continued.

streets and assessments 30
DETAILS OF SUBJECT 30
corollary of subject 30
cognate matters 30
change of classification and result as to officers 31
of title and object of act 31
what included with regulation of highways, etc. 31
protection of livery stable-keepers 32
protection of miners 23
divers classes of cities 32
cities and school districts 33
divers streets (special act) 33
PROVISIONS OF ACT MUST BE GERMANE TO THE SUBJECT AS EXPRESSED IN THE TITLE 34
what germane means 34
county seat and county boundary 34
assessments and streets 34
court clerk and grand jury 34
persons and parties 34
sewers and drains and charges for use 34
public buildings and public square 34
borrowing money and constructing bridges 34
borough and town plans and surveys 34
city controller designed county officer in salary act 34
Brooks law 34
costs and taxes and water rents 34
city officers and change of class 34
taxing dogs and declaring them property 35
release of husband's claim action by husband and wife 35
annexation and incorporation 35
elections of public officers and to increase debt 36
wholesalers and brewers and distillers 37
enabling act containing a disabling clause 37
summary convictions and penalties 38
street railways on rural roads 38

PAGE

TITLES OF ACTS OF ASSEMBLY—Continued.

borough improvement and sewers and pavements 38
elective tax in general tax law 38
taxation and appropriation 38
fruits *et cetera* may include trees 39
executions 39
adoption and collateral inheritance tax exemption 39
TWO SUBJECTS 40
prohibiting licenses and including legalized liquor selling 40
enactment and repeal 40
highways and novel mode of assessment 41
multiplicity 40, 41
general appropriation bill may incidentally create an office 53
ORIGINAL ACTS AND GENERAL SUPPLEMENTS AND AMENDMENTS 42
identification of original sufficient 42, 43, 44
general supplement may include what original title might have included 42, 43, 44
apparently erroneous recital not fatal 43
when general title and supplement insufficient 43, 46
when sufficient 43, 47
general amendment sufficient 44
generality in license law 46
error in recital 47
ORIGINAL ACTS AND SPECIFIC SUPPLEMENTS AND AMENDMENTS 47
maxim *expressio unius* applies 47
fish and game 47
destructive animals specified and not specified 48
REPEAL AND RE-ENACTMENT 48
when repeal need not be specified in title 48, 51
when repeal must be specified 48, 49, 50, 51
re-enactment not noticing intervening repeal 49
PROVISOS, EXCEPTIONS, AND EXEMPTIONS 52

PAGE

TITLES OF ACTS OF ASSEMBLY—Continued.
inconsistent proviso void 52, 53
amendment by proviso 52
exception need not be specified in title 53
exemption need not be specified in title 53
APPROPRIATION BILLS 53
general may incidentally create an office 53

TOWNSHIPS.
act relating to a certain township invalid 257
regulating collection of taxes in boroughs and townships valid 257
enabling taxpayers to contract for making roads in townships valid 257
see RES INTER ALIOS PRINCIPLE.

TRANSITION.
Luzerne Co. subject to Act of 1876 148
fee system restored on division of county 148
census the test of population 149
salary system restored in Luzerne County in 1890 150
Schuylkill became subject to in 1890 150
special statutory provisions for transition 151
transition of city 151
effect of 151
works only necessary change to adjust to class 151
office and officers remain as before, save as affected by new provisions 152
general laws relating to the class prevail over special formerly applicable 153
for example, general system of taxation supersedes former special system 155
see CLASSIFICATION.

TWO SUBJECTS.
prohibiting licenses and including legalized liquor selling 40
enactment and repeal 40

PAGE

TWO SUBJECTS—Continued.
highways and novel mode of assessment 41
multiplicity 40, 41
general appropriation bill may incidentally create an office 53

UNITY OF SUBJECT.
what is 11
see SUBJECT.

UT RES MAGIS VALEAT QUAM PEREAT.
maxim applies to titles 12

VALIDITY OF THINGS EXECUTED UNDER INVALID ACTS OF ASSEMBLY.
rule as to acts done under color of authority 217
rule as to officers *de facto* 217
distinction between personal immunity and creation of rights under invalid laws 218
immunity of officer extends to person acting under his direction 218
rule as to *de facto* streets and highways 219

VETERANS.
see COUNTIES.
see JUDICIAL MATTERS.
see PARTIAL REPEAL OF GENERAL LAW.

VOID IN PART.
only that portion of act fails which is not covered by the title 15
see ACTS OF ASSEMBLY VOID IN PART.

WAGES.
of manual labor
see SUBJECT.
see SPECIAL PRIVILEGES AND IMMUNITIES.